

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
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5 * * * * *
6 EGENERA, INC., *
Plaintiff *
7 Vs. * CIVIL ACTION
8 * No. 16-11613-RGS
CISCO SYSTEMS, INC., *
9 Defendant *
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14 BEFORE THE HONORABLE RICHARD G. STEARNS
15 UNITED STATES DISTRICT COURT JUDGE
AND A JURY
16 CIVIL JURY TRIAL DAY 2
August 3, 2022
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APPEARANCES:

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1 P R O C E E D I N G S

2 THE CLERK: All rise. Resuming on the record, civil
3 action No. 16-11613, Egenera, Inc. v. Cisco Systems, Inc.

4 Thank you. You may be seated.

5 THE COURT: All right. Good morning, counsel.
6 There's an issue over an interrogatory?

7 MS. NOTIS-McCONARTY: Yes, your Honor, good morning.
8 I'm Emma Notis-McConarty from Ropes & Gray. We do have one
9 outstanding issue with respect to the designation in response
08:56 10 to Interrogatory No. 15 that we generally would like to enter
11 into the record.

12 Cisco is objecting to the interrogatory as incomplete.
13 Egenera made its designation on March 22, 2022, and there were
14 no counter-designations or objections from Cisco at that time.
15 When we made our disclosures prior to trial, Cisco objected
16 only at that time, your Honor, and the time for objections has
17 really passed, so we'd like to resolve that issue this morning.

18 THE COURT: Okay. The reason for the belated
19 objection?

08:56 20 MR. PACKIN: Your Honor, it's not a belated objection.
21 What happened is they designated their interrogatories early.
22 The way they provided that was in shorthand, they didn't
23 provide us with redacted copies or anything like that.

24 What they did is -- and I'll show you -- essentially
25 this kind of table, so it's just essentially summarizing

1 without telling us the details of anything, just, you know,
2 here's the interrogatory, No. 15, and then they just -- they
3 didn't really show us the redacted version or what they planned
4 to enter.

5 The first time we saw what they planned to provide to
6 the jury was now, leading up to the trial, and that's fine,
7 because, you know, the parties agreed to provide it then.

8 The issue is that what they want to do is provide an
9 incomplete interrogatory. So, to be clear, we're not objecting
08:57 10 to the interrogatory. We didn't object then, we're not
11 objecting now. But they're trying to provide half an answer,
12 and to omit responsive, important information.

13 So the interrogatory question, just to give your Honor
14 the full --

15 THE COURT: Well, let's get right to the heart of it.

16 Under the doctrine of completeness, aren't we entitled
17 to see the whole interrogatory?

18 MR. PACKIN: Yes.

19 THE COURT: I don't see the issue.

08:57 20 MR. PACKIN: That was our only point, your Honor.

21 THE COURT: Let's put the whole interrogatory in.

22 MS. NOTIS-McCONARTY: Okay. Thank you, your Honor.

23 THE COURT: All solved.

24 We have -- one juror is delayed by traffic, so we will
25 be a minute or two late, okay?

1 THE CLERK: All rise.

2 (Recess taken.)

3 THE CLERK: All rise for the jury.

4 (Jury entered the courtroom.)

5 THE CLERK: All persons having business before the
6 Honorable Richard G. Stearns, United States District Judge now
7 sitting in Boston within and for the District of Massachusetts,
8 may draw near, give their attendance, and they shall be heard.
9 God save the United States of America and this Honorable Court.

09:08 10 Court is now in session, you may be seated.

11 Resuming on the record in civil action 16-11613,
12 Egenera, Inc. v. Cisco Systems, Inc.

13 THE COURT: Good morning again, counsel.

14 And good morning, jurors. It's great to you see. We
15 almost made it, only five, six minutes late. We're ready to
16 resume with the cross-examination.

17 MR. PACKIN: Yes, your Honor.

18 THE CLERK: I just remind you, you're still under
19 oath, sir.

09:08 20 THE WITNESS: Yes, thank you.

21 MR. PACKIN: Your Honor, may I approach the witness to
22 hand some binders over with documents?

23 THE COURT: Yes, you may.

24 MR. PACKIN: Good morning.

25 THE WITNESS: Good morning. How are you?

1 MR. PACKIN: I'm well, thank you.

2 (Discussion off the record.)

3 VERN J. BROWNELL, having been previously duly sworn by
4 the Clerk, was further examined and testified as follows:

5 CONTINUED CROSS-EXAMINATION

6 BY MR. PACKIN:

7 Q. Let's jump right back in, okay?

8 A. Yeah. Sure, thank you.

9 Q. So where we left off yesterday --

09:09 10 A. Yes.

11 Q. -- is we were talking about scalability?

12 A. Yes.

13 Q. Not trying to get into it with you, just remind the jury,
14 right?

15 A. We were speaking about scalability, yes.

16 Q. Right. And one of the things that you told the jury
17 yesterday -- this is your testimony, page 140, line 23 -- in
18 the early 2000s -- this was the question:

19 "Q. In the early 2000s, there were some technical
09:10 20 disadvantages to your approach, right?

21 "A. Not that I'm aware of."

22 Right, that's what you said?

23 A. Right. Not that I recall, actually, but, no.

24 MR. PACKIN: If can we switch to the -- Mr. Herzka,
25 please.

1 Q. I'd like you to turn in your binder to Mr. Geng's
2 testimony.

3 A. From March --

4 Q. Of 2018, and starting at line 95.

5 A. I'm sorry, is it in JTX-001-- where should I be turning?

6 Q. It's labeled Mr. Geng's testimony here in the back. Geng
7 testimony 2018, 3/16.

8 A. Way in the back here, I see, okay.

9 Q. Yeah.

09:10 10 MR. PACKIN: And it's clip G2, please.

11 (From video.)

12 Q. In the early 2000s, were there any disadvantages or
13 weaknesses at the BladeFrame app?

14 A. You mean technical disadvantages, or --

15 Q. Technical disadvantages, yes.

16 (Video paused.)

17 MR. BATCHELDER: Your Honor, I'm sorry. If this is
18 purported impeachment of this witness with someone else's
19 testimony, then I would object as non-impeaching.

09:11 20 THE COURT: Purpose?

21 MR. PACKIN: Yes, it's for impeachment; it's directly
22 contradictory.

23 THE COURT: Go ahead.

24 MR. PACKIN: I'm sorry, could you resume the clip,
25 please.

1 (From video.)

2 A. So, yeah, I guess any -- there are advantages and
3 disadvantages to different architecture types, and our
4 BladeFrame product had a centralized I/O capacity, and there
5 were potential disadvantages in that context.

6 Q. What were those disadvantages?

7 A. Mostly in the context of scalability and latency.

8 (End of video.)

9 BY MR. PACKIN:

09:12 10 Q. Okay. And one of the things Mr. Geng mentioned was
11 centralized I/O, right?

12 A. Yeah.

13 Q. I/O stands for input/output; is that right?

14 A. Yes.

15 Q. And you agreed with Mr. Geng that the generalized
16 BladeFrame had a centralized I/O, right?

17 A. I'd have to -- it depends on what time he was talking
18 about. The product went through many changes, and I'm not sure
19 when -- you know, he might have been thinking about -- did he
09:12 20 say 2000s?

21 Q. Early 2000s, that was the question.

22 A. I don't think I was aware of any limitations with regard
23 to that in that time frame.

24 Q. I'm just asking, you had a centralized I/O, right?

25 A. Yes, we did have centralized I/O in that time frame.

1 Q. And one of the functions of the cBlade was to serve as a
2 centralized I/O gateway, right?

3 A. Correct.

4 Q. So let me just add this to our chart here.

5 (Pause.)

6 Q. Okay. Let's keep going.

7 And one of the things that Egenera's I/O gateway did
8 was to modify messages coming from the processors to the
9 external network, right?

09:13 10 A. Yeah, this was 20 -- over 20 years ago. I don't recall, I
11 can't remember how that actually technically worked.

12 Q. Okay. Let's see if we can jog your memory.

13 One of the reasons you had to modify the messages was
14 because you used a Giganet network for the internal network,
15 right?

16 A. I do recall that we used the Giganet network for the
17 internal network, but beyond that, I don't recall.

18 Q. It was a long time ago?

19 A. It was over 20 years ago.

09:14 20 Q. Okay. Let's look at the diagram here on JTX-216, and this
21 is one of the documents that we looked at earlier.

22 Do you recall we looked at this page earlier?

23 A. Yeah, I believe this is the presentation that we put
24 together three months after the company was founded.

25 Q. Okay. So I just want to ask you some questions about this

1 document.

2 A. And this document was before we actually built the product
3 or even had engineers working on the product. So these were my
4 conceptions of what the product should be.

5 Q. I understand.

6 Network is a -- that stands for typical IP network,
7 for example, this network box on the bottom right?

8 A. Yes.

9 Q. And the storage box here on the bottom right, that
09:15 10 represents a storage network like a fiber channel SAN, for
11 example, right?

12 A. Yes, sir, yeah.

13 Q. And that's consistent with the way the product actually
14 worked in the future, it connected to network, IP network and
15 storage network, right?

16 A. Yes.

17 Q. And a storage network, it has storage devices in it,
18 right?

19 A. Yes, it would be, yeah.

09:15 20 Q. And you agree with me that storage devices on a SAN can be
21 addressed using fiber channel addresses, right?

22 A. I don't honestly recall how SAN addressing works in any
23 detail from 20 years ago.

24 Q. Okay. How about in general, are you -- you know that a
25 fiber channel address is called an FCID, are you aware of that,

1 or no?

2 A. It's a term that I have heard and was familiar with 20
3 years ago, but I really just don't remember.

4 Q. Got it.

5 So you don't know -- just so that we're clear, you
6 don't know whether or not fiber channel addresses are storage
7 addresses; is that right?

8 A. I think they can be a storage address, I don't know if
9 it's the only one. My memory is hazy there.

09:16 10 Q. Got it.

11 And Egenera did not invent fiber channel addresses,
12 right?

13 A. No, of course not.

14 Q. And let's keep talking about addresses.

15 You're familiar with MAC addresses, right?

16 A. Yes.

17 Q. You still remember what those are?

18 A. Yeah, I do remember those.

19 Q. A MAC address is a kind of address, right?

09:16 20 A. It's an Ethernet address --

21 Q. It's a kind --

22 A. -- from one of the IEEE specifications.

23 Q. It's a kind of address? That's keep it high level here.

24 A. It's an Ethernet address.

25 Q. Egenera didn't event MAC addresses, right?

1 A. No, that was -- my recollection -- DEC, in the early '80s.

2 Q. You're familiar with IP addresses, right?

3 A. Of course, yeah.

4 Q. Egenera did not invent IP addresses, right?

5 A. No, that's the core of the internet. We didn't invent
6 that. I wish I had invented the internet.

7 Q. And IP address is a kind of address, right?

8 A. It's the core of the internet, yeah, that's how the
9 internet works.

09:17 10 Q. And you're familiar with VLANs and VLAN IDs, right?

11 A. Sure.

12 Q. A VLAN ID, is that an address, or no?

13 A. That's also part of the IEEE 802.3 specifications, I
14 believe.

15 Q. Is a VLAN ID an address or is it not an address?

16 A. I believe it's called a tag, I'm not sure if it's an
17 address or not.

18 Q. Got it.

19 And Egenera did not event VLAN IDs, right?

09:17 20 A. No, that's another one I wish I did.

21 Q. And VSAN ID, you're familiar with that?

22 A. Not really, I'm not -- no, that doesn't ring a bell.

23 Q. You don't know what a VSAN ID is?

24 A. I have an idea, but, honestly, from 20 years ago, I don't
25 recall.

1 Q. Would you agree that a VSAN ID is also a tag and not an
2 address like a VLAN ID?

3 A. I'm sorry, I couldn't help you there.

4 Q. Okay. Now, these boxes called processors, still on the
5 same page, it's 6354 of JTX-216, these were eventually turned
6 into the processor blades or the pBlades, right?

7 A. Yeah, mm-hmm.

8 Q. Hold on, so you can see a little bit better here.

9 And these processor blades, they had no moving parts,
09:18 10 right? That's what we are seeing over here.

11 A. I can't actually see what's in those boxes, it's very
12 fuzzy there. Can you focus it?

13 No, it's kind of worse.

14 It says "processor," yes, in there.

15 Q. How about here? The processor blades have no moving
16 parts; you agree with that, right?

17 A. Well, they have moving parts, they have fans, so I don't
18 agree with that, actually.

19 Q. You told us during your direct testimony that the
09:19 20 processor blades have no HBAs, right?

21 A. Yeah, but it says "moving parts," there is a fan on there,
22 I think. So I think this may have been incorrect at the time,
23 you know, three months after I started the company.

24 Q. Okay. Let's look at clip B96, please -- I'm sorry, this
25 is your testimony on page 177 starting at line 2.

1 (From video.)

2 Q. And we already talked about the blade form factor. There
3 were companies that made blades before Egenera, correct?

4 A. Not like this, though. Even way back then, we were
5 referring to blades in quotes, these blades had no moving
6 parts. They had no NICs or HBAs -- so I'll have to go
7 slowly -- components like that, networking components. Those
8 were all virtualized. So Egenera's blades were very different
9 than the other blade vendors at the time.

10 (End of video.)

11 BY MR. PACKIN:

12 Q. Now, during your direct I think you also mentioned that
13 your blades had no HBAs, right?

14 A. Yeah, at the time I didn't realize there were fans on
15 there. So when I saw "moving parts," I remembered that there
16 were fans on the blades, but of course there were no NICs and
17 HBAs, you're absolutely correct.

18 Q. Let's be clear about that. Egenera's processor blades
19 have no network interface cards, no NICs, right?

09:21 20 A. No, there are NICs --

21 Q. You just said no NICs.

22 A. No, there are NICs for what's called the Giganet, the
23 thing you just mentioned.

24 MR. PACKIN: Okay. Let's go ahead and play clip B94,
25 this is on page 250 of your transcript.

1 (From video.)

2 Q. I see. And then the smaller blades, were those --

3 A. Those are called the pBlades, the processing blades, so
4 they could be any number of processors. There are these
5 so-called stateless blades that didn't have the, you know, NICs
6 and HBAs and components, all of that was virtualized.

7 (End of video.)

8 BY MR. PACKIN:

9 Q. So I think you said that they didn't have NICs. I think
09:21 10 you said that yesterday, too. I can show you if you want me
11 to.

12 A. Yeah, there's a minor distinction. There are NICs that
13 are on the fabric --

14 Q. This is the NICs.

15 A. -- but those are different NICs, if you will. The NICs
16 that are on the blade -- that were virtualized would have been
17 what the customer would see. So the customer had different
18 access to the internal blade -- the internal NIC, but there are
19 NICs on -- I was either mistaken or --

09:22 20 Q. Okay. You were mistaken there, and -- let's see, let me
21 pull up your testimony from yesterday just so we can see that.

22 This is on page 84 of the transcript. Remember, you
23 were talking about the puzzle pieces, right? This is the trial
24 transcript --

25 A. Do I go to 84?

1 Q. No, no, I have it right here, you can look on the screen.

2 This is the trial transcript. This is from yesterday.
3 And you were talking about the puzzle pieces, and what you told
4 this jury is: "They have no NIC or HBA that needs to be
5 managed."

6 A. Yeah, that's actually correct, and it explains it. So the
7 management, a customer would never see the internal NIC in our
8 product, they would not have to manage it.

9 Q. Great. Let's look at DX -- I mean -- I'm sorry, I'm going
09:23 10 to pull up JTX-35. This is a software functional specification
11 for the Egenera BladeFrame by Scott Geng.

12 Do you see that?

13 A. Yeah, that's great. It's the first time I've seen it in
14 20 years. It's nice to see.

15 Q. Okay. Let's look at what it says here.

16 "The processing blades do not contain Ethernet network
17 interface cards."

18 That's what it says, right?

19 A. That's true, they don't contain Ethernet, they contain the
09:24 20 Giganet --

21 Q. And the reason -- sorry. And the reason that they don't
22 contain the NICs is because the kernel that we talked about
23 yesterday is modified to -- I think it says emulate, but you
24 said virtualize the NIC, right?

25 A. Yeah, for that type of NIC, but not the Giganet NIC, but,

1 sure.

2 Q. And let's look at another document here. This is -- and
3 so just to be clear, that type of NIC that we were looking at,
4 that was virtualized using the operating system that's running
5 on the CPU, right?

6 A. I think, more correctly, it's virtualized using all of PAN
7 Manager.

8 Q. Right, but we just saw the kernel, the kernel is talking
9 about the operating system, right? That's what we talked about
09:25 10 yesterday.

11 A. It's part of the overall system, but just to be correct
12 it's the overall PAN Manager.

13 Q. Let's look at another document that you showed us
14 yesterday.

15 This is the proposal that Egenera presented to Cisco,
16 right? JTX-266, you showed it to us yesterday.

17 Do you recall that?

18 A. Yes.

19 Q. And you went through the puzzle pieces, and I'd like to
09:25 20 show you one of those slides, so I'm turning to page 22.

21 And you talked about the right-hand side and you
22 explained the middle is the CPU, right?

23 A. That's right, yeah.

24 Q. And it has all these other pieces, and you talked about
25 how you didn't have -- it's hard to see on this -- but you

1 didn't have the yellow piece which was the HBA, right?

2 A. Correct.

3 Q. And you didn't have another yellow piece, which was the
4 NIC, right?

5 A. Correct.

6 Q. And this diagram of the legacy component, you actually
7 show a physical diagram and you show all the different pieces,
8 and you show, for example, an HBA over here -- let me switch to
9 red here -- an HBA, right?

09:26 10 A. Correct.

11 Q. Those are these cards over here?

12 A. Mm-hmm.

13 Q. And then you also show the NIC, right?

14 A. Mm-hmm.

15 Q. And those are these blue cards over here?

16 A. Yes.

17 Q. And then what you did is you simplified the puzzle and you
18 just had CPUs and memory, and we see here no more NICs, no more
19 HBAs, right?

09:26 20 A. Well, there is a NIC on that card, it's just not shown.

21 MR. PACKIN: Mr. Herzka, can you pull up -- can we
22 have Mr. Herzka -- can we pull up DDX-312, please.

23 I'm sorry, DDX-3.12. It's the slide that we created
24 here.

25 Q. Okay. So I created this slide so that we can all see it

1 very clearly.

2 This is what you were showing Cisco, right? Right,
3 sir?

4 A. Yeah.

5 Q. Right. And on the left, we see the cards, right?

6 A. Mm-hmm.

7 Q. And on the right, we don't see the NIC cards, right?

8 A. Yeah.

9 Q. And so we see that one of the things Egenera was
09:27 10 highlighting is that it didn't have these Ethernet NIC cards,
11 right, on the blades?

12 A. Ethernet NIC cards, yes, correct.

13 Q. So let's just write that down.

14 Blade without NIC, that's what the diagram was
15 showing.

16 A. Ethernet NIC.

17 Q. Ethernet NIC.

18 Okay?

19 A. Yeah, that's great.

09:28 20 MR. PACKIN: Your Honor, I'd like to offer this
21 document reflecting Mr. Brownell's testimony as JTX-486.

22 THE COURT: Very well.

23 MR. PACKIN: Thank you.

24 (Exhibit JTX-486 marked for identification.)

25 MR. PACKIN: I'm going to sticker it with a physical

1 sticker here.

2 BY MR. PACKIN:

3 Q. Let's switch gears here.

4 Now, you were just telling us about how your memory is
5 a little bit hazy from 20 years ago.

6 A. Certain parts I remember, certain things I don't remember,
7 yeah.

8 Q. Totally understandable. I can't remember what I had for
9 lunch yesterday.

09:29 10 Let's talk about what you told the jury yesterday,
11 though, about 20 years ago; or 2004, I guess, is 18 years ago
12 at this point.

13 So you talked about some meetings with Cisco in 2004.
14 Do you recall that?

15 Do you recall you talked about meetings with Cisco in
16 2004?

17 A. Yes.

18 Q. You talked about phone calls also?

19 A. Yes.

09:30 20 Q. Okay. Let's take a look at page 106 of the trial
21 transcript here. This is from your testimony, I'm looking at
22 106, line 11.

23 You were asked:

24 "Q. So before the face-to-face meetings that
25 Mr. Thomases referenced, there were phone calls?"

1 You said:

2 "A. There were a number of phone calls.

3 "Q. Who were you talking with?

4 "A. I spoke with Ammar Hanafi, Ed Chapman, and Soni
5 Jiandani. There may have been others as well."

6 Right?

7 A. Yeah, there may have been a meeting, too, besides the
8 phone call, but --

9 Q. So you were able to remember these specific names.

09:30 10 Let's look at what you said in your deposition which
11 was -- your deposition was in 2018, right? That was four years
12 ago?

13 A. I think so, yeah.

14 Q. Let's look at what you said at your deposition on page 78,
15 line 13, it's clip B68.

16 MR. PACKIN: I think we need to go back to Mr. Herzka.

17 (From video.)

18 Q. You don't recall any specific phone call you had with
19 anyone at Cisco, right?

09:31 20 A. Other than with the calls with Ammar, yeah.

21 (End video.)

22 Q. Okay. And let's -- I don't want to belabor the point
23 here, but let's do one more.

24 So you talked --

25 MR. PACKIN: If I can have the ELMO back, please.

1 Q. So you talked yesterday -- and this is page 110 of the
2 transcript -- you were talking about -- you presented the slide
3 deck and you said you thought it was 68 slides that you had to
4 present -- presentation. It was a big deck, right?

5 A. Yeah, I think it might have been 65, I could be wrong.

6 Q. Okay. And you went through it, and you were asked:

7 "Q. Was the entire deck presented?"

8 And you said:

9 "A. I believe most of it, if not all, was presented,
09:32 10 yes."

11 And then:

12 "Q. You started going through the individual slides?"

13 Do you remember that?

14 A. Yeah.

15 Q. You said -- let's look at page 19. We've seen this
16 picture before, but what was Egenera explaining to Cisco here?

17 And then you go into some detail, pretty specific
18 detail.

19 You say: "This is kind of eye opening for Cisco. It
09:32 20 seems like they were, you know, again, at the edge of their
21 seats and taking a lot of notes and so on."

22 Right, you went through that yesterday?

23 A. Mm-hmm.

24 Q. And then you went to additional slides, you said slide 25.

25 "And used this to explain what to Cisco?"

1 And then you went on to explain.

2 And you did it again, slide 9. What did you do? You
3 explained. What did you explain to Cisco?

4 Now, let's look -- we showed you this slide deck at
5 your deposition, it was Exhibit 10, and we asked you about it.

6 And let's -- this is page 214, line 23, it's clip B61.

7 (From video.)

8 Q. And was there a presentation given?

9 A. I don't recall -- well, I -- honestly, I don't recall.

09:33 10 There was a presentation given; whether it was verbal or with
11 these slides or whatever, I don't -- I don't know.

12 (End of video.)

13 Q. Okay. Let's keep going here.

14 MR. BATCHELDER: Your Honor, for the completeness
15 doctrine, if we could read in the rest of that passage,
16 starting at 215, line 6 through 21.

17 THE COURT: Go ahead.

18 MR. BATCHELDER: Thank you.

19 These slides --

09:33 20 "Q. These slides look like slides that were created
21 for --

22 "A. Yeah, says here Pete said he put this together.
23 Sort of looks like a conglomeration of slides that we may or
24 may not have used the presentation.

25 "Q. Did you give these slides to people at Cisco as

1 leave-behind?

2 "A. I don't recall but I wouldn't be surprised.

3 "Q. Did you -- besides these slides what else did you
4 tell the people at Cisco?

5 "A. I do remember there were much deeper discussions
6 than what is here, there were a couple of individuals in
7 particular. There was a lot of verbal discussion around deeper
8 dives into the technology."

9 Thank you.

09:34 10 BY MR. PACKIN:

11 Q. All right. So we talked about 2004, and Egenera's
12 lawyers, when they gave the timeline, they also started in
13 2004, you remember that, for opening?

14 A. I actually didn't see the time -- I couldn't see the
15 timeline up close.

16 Q. Got it.

17 All right. Let's talk about what happened before
18 2004, okay?

19 A. Sure, yeah.

09:34 20 Q. Now, Egenera launched BladeFrame in 2001, right?

21 A. That's correct, yes.

22 Q. And you spoke to Mr. Hanafi in the 2004 time frame, right?

23 A. I don't recall my first conversation with him, but most of
24 the conversations were in that time frame.

25 Q. And it wouldn't surprise you that from the time you

1 released the BladeFrame to the time you spoke with Mr. Hanafi,
2 that Egenera's salespeople were actively trying to sell to
3 Cisco, right?

4 A. No, not surprised.

5 Q. And you would expect your salespeople to do that, right?

6 A. Yes.

7 Q. And you never told your sales reps not to sell to Cisco,
8 of course.

9 A. No.

09:35 10 Q. So it wouldn't surprise you that Egenera's salespeople
11 reached out to Cisco in 2002, right?

12 A. No, it wouldn't.

13 Q. So let's take a look at that. I have JTX-11.

14 MR. PACKIN: There we go. And if you can just blow
15 out the top half of that, please.

16 Perfect.

17 Q. So this is an email here, right? You see the email?

18 And it's from Mr. Kevin Janssen, right?

19 A. Right.

09:36 20 Q. And the date is January 2002, right?

21 A. Yes.

22 Q. And Vern Brownell, that's you?

23 A. Mm-hmm.

24 Q. And it talks about a visit with Cisco?

25 A. Yes.

1 Q. And the sales guy was trying to sell Cisco's IT group the
2 BladeFrame in 2002, right?

3 A. Right.

4 Q. And this was a typical interaction that you would expect
5 Egenera's sales force to have, right?

6 A. Yes.

7 Q. And it was the first step in this typical sales process
8 that Egenera was typically 18 to 24 months, right?

9 A. Yeah, it could be, yeah.

09:36 10 Q. So 18 to 24 months later could put you around the time
11 that Cisco purchased the BladeFrame, right?

12 A. Yes, although I think it was corporate development that
13 actually purchased the BladeFrame, not the IT group.

14 Q. All right.

15 A. That's my recollection.

16 Q. Okay. Let's -- papers don't get out of order here, one
17 second.

18 Okay. Let's switch gears here and talk about Egenera
19 and Egenera sales, okay?

09:37 20 A. Sure.

21 Q. I've created a little bar graph here that is helpful for
22 keeping tracks of date. I prefilled the bars but we'll
23 double-check them together to make sure they're right, okay?

24 A. Yeah, sure.

25 Q. Okay. So you started Egenera in 2000, right?

1 A. That's correct, yeah.

2 Q. And then in 2001, you launched the BladeFrame, right?

3 A. Toward the end of 2001, yes.

4 Q. Okay.

5 A. So that was a few months' worth of revenue.

6 Q. Exactly. So we're getting there.

7 Now, when you started the company, you started it out
8 with your own money, I think you said that from your testimony?

9 A. Yeah, for the first -- from the beginning until I think
09:38 10 October, something like that.

11 Q. And then you had venture funds and private equity funds
12 invest in the company, right?

13 A. Yes.

14 Q. And that's Mr. Phillips here, he's from a private equity
15 fund, right?

16 A. Yeah, he was a long-time investor.

17 MR. PACKIN: And if we can pull up -- well, actually,
18 let me do it so we're not switching back to the ELMO.

19 Actually, if you wouldn't mind giving it back to
09:39 20 Mr. Herzka, sorry.

21 So if we could pull up JTX-216 at page 31.

22 You see on the bottom there -- can we get the bottom
23 bullet point blown up here, see it a little bit better, bad
24 copy here.

25 Q. And so in the early time before you launched the product,

1 Egenera was in a stealth approach, right?

2 A. Yeah.

3 Q. And that's common for startups to be in --

4 A. I don't think we -- again, this is the first presentation,
5 you know, from three months after. We didn't really call it
6 stealth mode after that, but we were not disclosing it to
7 anyone, of course.

8 Q. It's common for startups to be in stealth, right?

9 A. Yeah.

09:40 10 Q. Okay. Now let's -- if we can go back to the ELMO, I think
11 I could probably do it a little quicker here.

12 We're going to zip through some of these exhibits just
13 to confirm the numbers and that we've got it right.

14 So I'll start with JTX- -- this is JTX-61, Egenera's
15 consolidated financial statements. And let's flip to the right
16 page here, and let's start with 2001. Product revenue,
17 179,000, right?

18 A. Yeah.

19 Q. And that was because it was only part of the year, right?

09:41 20 A. Yeah, I suppose. That's when you have the dollar bill,
21 your first dollar bill that you make, I got that that year.

22 Q. Let's go ahead and write that here.

23 Let's keep going. I think I have a later
24 consolidated, so we'll do that one.

25 So this is JTX-62, and that's Egenera's consolidated

1 for 2002 and 2003, right?

2 A. Yeah, looks correct.

3 Q. And if we go to your product revenues, 2002, we see here
4 about 12 million, right?

5 A. Yeah, that looks correct.

6 Q. And 2003 is about 38 million, right?

7 A. Mm-hmm.

8 Q. All right. So let's just add those to the chart.

9 Got to remember these numbers, 12 million, so that's
09:42 10 just above the 10, so this looks right to you, right?

11 A. Mm-hmm.

12 Q. Yes?

13 A. Sure, yeah.

14 Q. And this is 38 million, just below the 40. So far, so
15 good?

16 A. Looks correct, yes.

17 Q. Let's go ahead and --

18 A. By the way, I trust you on all the numbers if you want to
19 save some time.

09:42 20 Q. No, I think -- you know, we're in a trial here, we've got
21 to make sure the numbers are right.

22 A. It's up to you.

23 Q. We saw some different numbers, so I want to make sure that
24 we've got all the evidence, but I appreciate your cooperation,
25 so let's just go through it quickly.

1 So 2004, that's 49 million.

2 A. 72 million.

3 Q. Oh, I'm missing -- I'm missing these related, so you have
4 to add 49 plus 16 for the product revenues, right?

5 A. So the total revenue is 72 million in --

6 Q. We're just doing product revenues right now. So 49 plus
7 16 for the product, here's the product. I'm not talking about
8 services, just product. So that's 55 --

9 A. Just out of curiosity, why aren't you including service?

09:43 10 Q. Because I'm focused -- you see I said "Product Revenues"
11 here?

12 A. Okay. Yes, sorry. Yeah, got it.

13 Q. So 55 million?

14 A. Sounds right.

15 Q. See, that's why I want to ask you, to make sure I got it
16 right.

17 A. I'm trusting you here.

18 Q. Oops, I'm sorry, 65 million. 65 million.

19 Okay. So things were going pretty well at the
09:44 20 beginning, right?

21 A. Yeah, I think that was dramatic growth.

22 Q. That's dramatic growth we've got going here, right?

23 And things were going so well, that you explored
24 filing an IPO, right?

25 A. We did, yeah.

1 Q. An IPO is initial public offering where you offer sales on
2 the stock exchange, right?

3 A. That's correct, yeah.

4 Q. And that was in June 2004; is that right?

5 A. I don't remember exactly, but it sounds right.

6 Q. We can take a look.

7 I'm sorry, that's the big -- couldn't find it because
8 the S-1 is this big document, right, it's in a separate binder.

9 Let's use the front page just to get a look.

09:45 10 And that's your S-1, right?

11 A. S-1, correct.

12 Q. June 2004.

13 And the S-1, that's filed with the United States
14 security and exchange commission, right?

15 A. That's correct, yes.

16 Q. It's an important document.

17 A. Oh, yeah.

18 Q. It's got -- everything has got to be right in there,
19 right?

09:45 20 A. Yeah.

21 Q. If it's not right, it's a federal crime, right?

22 A. I suppose that's correct, yes.

23 Q. Okay. So let me add --

24 Okay. Egenera tries to go public.

25 Now, let's look -- I think we had it here before --

1 but let's look at what happened to your sales in 2005, going
2 back to JTX-63.

3 2004 we already did. 2005 we've got to do a little
4 math here because we've got it in two different rows. That's
5 53 plus 14, 67; is that right?

6 A. 67.7, yeah.

7 Q. 67.7, all right.

8 A. 68.

9 Q. 68, all right.

09:46 10 A. It's around there, correct.

11 Q. 68 million. So your sales, the exponential growth had
12 stopped, right?

13 Sir --

14 A. It was modest growth at that point, yeah. I don't know --
15 you know, I could --

16 Q. And what happened in 2005 is that you actually withdrew
17 the S-1, right?

18 A. Yes, and my recollection there is that the market
19 conditions, there was a mini downturn on Wall Street, so some
09:47 20 of our customers -- we were very concentrated with Wall Street
21 customers. And under the advice of our investment bank, we
22 decided to not go forward.

23 Q. Okay. And that -- you withdrew the IPO, that was April
24 2005. You can take a look, I've got it here, you don't have to
25 trust me on the dates, JTX-349.

1 A. In 2005.

2 Q. April 2005, right? Okay.

3 (Pause.)

4 Q. Okay. Let's keep going here on the revenue.

5 Now, just to be clear here, there was never any
6 discussion that the reason for withdrawing the IPO was because
7 of Cisco, right?

8 A. No.

9 Q. Okay. Let's keep going.

09:48 10 A. It was because of the downturn in the finance business, as
11 we talked about.

12 Q. Okay. Got JTX-459. That's 2006, '7 and '8 consolidated
13 financials, right?

14 A. Mm-hmm, yes, sir.

15 Q. Okay. So 2006, that's 84 million, right?

16 A. Yes.

17 Q. Okay. So let's put that up here.

18 2007, 83 million, right?

19 A. Looks correct, yeah.

09:49 20 Q. And 2008, 62 million, right?

21 A. Yes, that's right.

22 Q. And my bars here, those are right, right? So the 84 is
23 just above the 80; 62 is just above the 60, right?

24 A. Yes, looks correct.

25 Q. And 2009, it's the last one.

1 2009, JTX-461, that's also Egenera's consolidated
2 financials, right?

3 A. Mm-hmm.

4 Q. 2009 is 37 million, right?

5 A. Yes, yup.

6 Q. Yeah?

7 A. Yeah.

8 Q. And 2009, I think you said you stopped -- you left
9 Egenera, you stopped being the CEO, right?

09:50 10 A. Oh, I stopped being the CEO back in, I think, 2002.

11 Q. Oh, you left employment, I'm sorry, at Egenera in 2009,
12 right?

13 A. That's correct, yeah.

14 Q. You went to be the CEO of another company.

15 A. Yes.

16 Q. Now, you'd agree with me that your sales from 2007, 2008,
17 they went down, right?

18 A. They did, yeah, that was --

19 Q. And from 2008 to 2009 they went down, right?

09:51 20 A. Well, yeah, that's all the financial crisis that we all
21 probably recall. Mortgage crisis.

22 Q. And at some point during this time frame, you also
23 released a software-only product in addition to the BladeFrame,
24 right?

25 A. I couldn't tell you when that was. I really don't know.

1 Q. Okay. Well, why don't we -- again, we got to get it
2 right, this is a trial.

3 So why don't we go to DX-CT in your binder.

4 I could put it on the screen for you.

5 A. DX-CT?

6 Q. Yeah, we've got these letter-number things.

7 That's a board of directors meeting from April of
8 2007, right?

9 A. Sorry, can you give me those numbers again?

09:52 10 Q. It's a letter, it's CT, but I can show you on the screen.

11 A. DX what? I'm sorry.

12 Q. It's DX-CT.

13 A. Got it.

14 Q. It's a letter, not a number.

15 A. Got it.

16 Okay.

17 MR. PACKIN: And I'll offer that as JTX-487, just so
18 that we can avoid these letters.

19 (Exhibit JTX-487 received into evidence.)

09:52 20 A. So this is a 66-page PowerPoint presentation that I
21 haven't seen in 15 years.

22 Q. I understand. I think we're just talking about the date
23 here. It's not a pop quiz, we just want to get the date right.

24 So if we look at -- so this was from April 2007. If
25 we look at slide 7 --

1 A. Sorry, my eyes are not --

2 Q. You can look on the screen, that might be easier.

3 The first bullet says: "Release our software only
4 product by year end."

5 Just trying to remind you of when you released your
6 software-only product.

7 A. Yeah, that says to me that we were aiming to release it by
8 then, but I honestly don't know if we did or not.

9 Q. So this is 2007, so sometime in 2007, '8, '9, you released
09:53 10 the software. Don't know?

11 A. I don't know. You have a -- it's probably -- it could
12 have been in that time frame, I don't know.

13 Q. But at some point Egenera -- let me ask it this way.

14 You supported the idea of Egenera becoming a
15 software-only company, right?

16 A. Yes. But it was a transition. We still sold BladeFrame
17 hardware well into the '10s, you know, into the next decade.

18 Q. So looking at this chart again, so 2007, 2008, 2009,
19 things were not going so well, right?

09:54 20 A. Yeah, the financial crisis had hit all of us, and it was
21 reflected in our business as well.

22 Q. And in the fall 2008, Egenera started its first round of
23 serious layoffs, right?

24 A. Yeah, layoffs are always tragic. I honestly don't recall
25 when that started, but it could have been --

1 Q. Okay. Let's take a look.

2 JTX-368.

3 So this is JTX-368, it's an article from November
4 2008. It says: "Egenera lays off 87 workers, refocuses on
5 software."

6 You see that?

7 A. Yeah, that's very sad.

8 Q. And then it says: "Egenera has reported laying off 28% of
9 its workforce."

09:55 10 Do you see that?

11 A. I mean, what I recall is the layoffs, and any layoff is a
12 tragedy. I don't recall the exact number, but those are real
13 people that we had to lay off.

14 Q. All right. So let's just write, how about "Egenera begins
15 serious layoffs," we don't have to write a number here, okay?
16 Fair?

17 A. Yeah, any layoff is serious.

18 Q. And certainly laying off over a quarter of your company is
19 very serious?

09:56 20 A. If that number was correct, yeah.

21 You lay off one person it's serious. I don't recall
22 exactly how many.

23 Q. Okay. You've been talking about the 2008 financial crisis
24 causing this issue, right? You've been talking about that.

25 A. Yes, sir.

1 Q. And I think you were here for openings when my colleague,
2 Mr. Desmarais, he told the jury that HP was a competitor during
3 that time, right?

4 You were here for that is all I'm asking.

5 A. Yeah, I was.

6 Q. Let's see what you told this jury.

7 Before I -- let me do this.

8 So this is page 97 of the trial transcript.

9 And you were asked specifically about Mr. Desmarais'

09:57 10 comments.

11 "Q. You heard Mr. Desmarais say that competition from
12 HP mortally wounded Egenera?"

13 And your answer was: "I don't even remember HP being
14 a competitor at all, anytime."

15 Then you go on.

16 "We never saw HP as a competitor."

17 Right?

18 A. Yes. What I probably should have said was in the data
19 center virtualization space, because they didn't have a product
09:57 20 like Egenera's or UCS.

21 I believe they still don't.

22 Q. You were on the board of Egenera for this entire time
23 period, right?

24 A. Yeah.

25 Q. And you got board presentations on a regular basis, right?

1 A. Yeah, probably before every board meeting, once a quarter.

2 Q. And there was a portion of those board presentations that
3 was generally directed to competitive analysis, right?

4 A. Mm-hmm.

5 Q. I'm sorry, you have to say --

6 A. I'm sorry. Yes, sir.

7 Q. So let me hand you -- this wasn't in the binder because I
8 added it.

9 MR. PACKIN: Your Honor, may I approach?

09:58 10 THE COURT: You may.

11 BY MR. PACKIN:

12 Q. Let me hand you DX-FJ.

13 (Discussion off the record.)

14 MR. PACKIN: I'm sorry, I handed up too many copies.

15 Q. Okay. So DX-FJ, that's a board of directors meeting from
16 April 2008, right?

17 A. Yes, sir.

18 Q. That's the time period we're talking about.

19 Let's just --

09:59 20 A. It seems like something's missing from here, but it's not
21 a --

22 MR. PACKIN: Just for the record, I'm going to offer
23 DX-FJ as JTX-488, your Honor.

24 THE COURT: Very well.

25 (Exhibit JTX-488 received into evidence.)

1 BY MR. PACKIN:

2 Q. Okay. Let's look at what the board of directors was
3 saying in 2008 about your revenue.

4 Let's look at slide 5 here.

5 A. I'm not sure this has the presentation because it has like
6 handwritten notes on it and blanks and such.

7 Q. 2008 revenue issues, you see that?

8 A. Yeah, just a point of order, there's, like, handwritten
9 notes and a blank page is on here. It doesn't seem like it's
10:00 10 the board packet.

11 Q. Okay.

12 A. So maybe you have a better one?

13 MR. PACKIN: Sure. I think I've got it. I've got
14 another one.

15 A. It's okay. It looks like I don't need it. It's just --
16 it looks like your scribbled notes here.

17 Q. No, it's not my scribbled notes.

18 You see here there's an email to you? You're on
19 here, it's from Mike Thompson --

10:01 20 MR. BATCHELDER: Do you have copies?

21 MR. PACKIN: I don't, but -- I just want to make sure
22 we're right here.

23 A. I don't think Mike would have put in an email something
24 with scribbled notes and blanks, so I don't think that is the
25 presentation.

1 MR. PACKIN: I've got the final one, this is the one
2 on the -- if you've got issues with that --

3 A. I don't, go ahead. That's fine.

4 Q. So this is Mike Thompson added, we have a Bates number
5 here, and we've got the actual attachment to Mr. Thompson's
6 email, that was in the production at Egenera 02209780. Okay?

7 So 2008, that's the time period we're talking about,
8 right?

9 A. Yes.

10:02 10 Q. And competition, under "Competition" it says: "HP has
11 gained ground."

12 In 2008, right?

13 A. Can you look at the next bullet as well, under that?

14 Q. Your counsel will ask you about the next bullet, that's
15 fine, but I'm not trying to hide anything here.

16 A. It says, "Competing against 'good enough' at lower cost."

17 What that means is that HP was selling traditional
18 servers, not an Egenera product or anything competitive with
19 Egenera, they were just selling good enough, old-fashioned
10:02 20 servers against us at a lower cost.

21 Q. Let me ask you this: In 2008, the only competitor you
22 have on the slide that listed revenue growth issues was HP,
23 Hewlett-Packard, correct?

24 A. That's what it says, yeah.

25 Q. Right.

1 You said, "I don't even remember HP being a competitor
2 at all, anytime. We never saw HP as a competitor."

3 Let's keep going.

4 A. What I meant -- what I said --

5 Q. Let's keep going.

6 A. That's okay. We can --

7 -- that HP did not have a competitive product to
8 Egenera. But they could sell their traditional products to be
9 competitive.

10:03 10 Q. Okay. Let's talk about that HP product for a second here.

11 Now, you read -- you're familiar with Gartner, right?

12 A. Oh, yeah.

13 Q. Gartner creates market studies?

14 A. Yes.

15 Q. And you've read Gartner data?

16 A. On and off over the years, it's a very important --

17 Q. Let's look at DX-IP. This is Magic Quadrant. You see
18 here Magic Quadrant for blade servers, right?

19 A. Yeah.

10:04 20 Q. And on the bottom it says "Gartner," right?

21 A. Yeah, I imagine that would describe the blade server
22 market in particular, not the virtualized --

23 Q. Right.

24 A. -- type of product that we had. But we were also
25 sometimes considered in that space as well, but that wasn't our

1 primary attribute, but, sure.

2 MR. PACKIN: Your Honor, I offer DX-IP as JTX-489.

3 THE COURT: All right, 489.

4 (Exhibit JTX-489 received into evidence.)

5 BY MR. PACKIN:

6 Q. And let's look at what Gartner said about HP.

7 It says: "Building on the acquisition of Compaq and
8 RLX Technology, HP has been a blade market leader through this
9 decade."

10:05 10 Right? That's what it says.

11 A. Yeah, again, blade market. We weren't really -- you know,
12 we were part of that market, but not exactly.

13 Q. Understood.

14 And then it says: "Since the 2006 introduction of its
15 latest blade generation, HP has recaptured market leadership
16 and now sells more blade servers than the rest of the market
17 combined."

18 Right?

19 A. Yeah, those were those low-cost, traditionally architected
10:05 20 bladed servers that we referred to in the --

21 Q. Okay. Let me just add that to the timeline because I
22 think that's important.

23 That was 2006 we said HP introduces latest blade
24 generation, right? That's what it said.

25 A. Well, I mean, they had probably blade generations every

1 other year, so that's, you know -- I think they probably
2 started in blades in the early -- maybe even before Egenera.

3 Q. And we saw earlier, in your 2008 presentation, "competing
4 with HP." We saw that in the board minutes.

5 A. No, no, we didn't see that at all. We saw on the board
6 that said there's some competition from HP selling low-end
7 servers. That's not the reason for that decline. That's a
8 big, huge assumption.

9 Q. Okay. So you want to take this one off, I could take it
10:07 10 off, "competing with HP"?

11 A. Yeah, because it's totally not true -- well, it is true
12 that we were competing HP with their traditionally architected
13 servers, but that wasn't the reason for the decline.

14 Q. So it's true that you were competing?

15 A. With their traditionally architected servers, yeah. Their
16 blade servers.

17 Q. Okay. So should I write "with HP blade servers"?

18 A. No, I don't -- my recollection is that that decline in
19 revenue had little, if nothing -- little to do with --

10:07 20 Q. Okay, nothing to do with HP?

21 A. I wouldn't say "nothing," I'm sure it had some impact,
22 but --

23 MR. PACKIN: Your Honor, could I offer DDX-314 as
24 JTX-490?

25 MR. BATCHELDER: Your Honor, I have no objection to

1 this being a demonstrative.

2 MR. PACKIN: I can take off this "Competing with HP"
3 and then we can offer it as an exhibit, your Honor. It's the
4 witness' testimony. And it's also a summary of voluminous
5 records which we went through in detail here.

6 MR. BATCHELDER: Again, I would say it should be a
7 demonstrative.

8 THE COURT: It is a demonstrative, the jury can use it
9 and compare it with the actual exhibits.

10:08 10 MR. PACKIN: Okay.

11 BY MR. PACKIN:

12 Q. Okay. So --

13 (Pause.)

14 Q. So we saw your testimony earlier, I can't find it or I
15 would put it on the ELMO, "not competing with HP anytime," I
16 don't think I need to show it again. We saw it, right? We
17 don't need to go back there, we saw it.

18 A. My only comment was their traditionally architected
19 servers and blade servers.

10:09 20 Q. Now, let's see in your S-1 what you told the security and
21 exchange commission under very, very strict standards.

22 So I'm going to flip to the competition slides.

23 And it says here: "We face intense competition from
24 the leading enterprise computing companies in the world as well
25 as emerging companies."

1 It says that, right?

2 A. It does, and my recollection, I'm not -- it's been quite a
3 while since we filed this, but there's a section in the S-1
4 where you declare risks to the business.

5 So these are sort of like the bad things that could
6 happen to the business and outcome -- excuse me.

7 Q. Like HP eating your lunch, for example, that's one bad
8 thing?

9 A. What we're saying here -- it says here, if -- so to be
10:10 10 fair to people who were buying stock, you say -- this is in the
11 section: "If we fail to maintain a leadership position in the
12 emerging utility computing market, our sales and competitive
13 position will suffer as a result of our operations."

14 So we were giving a warning -- this is in every
15 S-1 -- to potential investors that these things could happen,
16 not that they did happen.

17 Q. I understand.

18 But what you actually say, if we look at the
19 language, "our most significant competitors," then you say
10:10 20 "International Business Machines Corporation," that's IBM; and
21 the second one is "Hewlett-Packard Company."

22 Hewlett-Packard Company is HP, right, sir?

23 A. Yes, and --

24 Q. Okay. Thank you.

25 A. -- again, that's competition from the --

1 MR. PACKIN: Thank you, sir. No further questions.

2 I pass the witness.

3 THE COURT: Any redirect?

4 MR. PACKIN: Too many papers, I apologize.

5 MR. BATCHELDER: Not at all.

6 Thank you, your Honor. Before I begin with the
7 witness, if I could, I neglected yesterday to state on the
8 record that PX-BGX is also the designated JTX-485.

9 THE COURT: All right, so noted.

10:11 10 MR. BATCHELDER: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. BATCHELDER:

13 Q. Good morning, Mr. Brownell.

14 A. Good morning.

15 Q. I thought I would start with a couple of places where it
16 was suggested on your cross-examination that you had testified
17 inconsistently here and in your deposition.

18 A. Sure.

19 Q. You'll recall that when you and I were talking yesterday,
10:12 20 we talked about the subject of scalability.

21 A. Yes.

22 Q. Why don't we put up JTX-216, please, at slide 6395.

23 And you'll see that first bullet is "highly scalable,"
24 and I asked you about that yesterday, and you explained what
25 that meant in the context of your architecture, correct?

1 A. Exactly, yes.

2 Q. And then on cross-examination, you were asked about
3 scalable and you suggested you thought it was meaningless and
4 counsel played a deposition clip, do you recall?

5 A. Yes.

6 Q. And did he show you your full testimony about that
7 subject?

8 A. No, no.

9 Q. Let's put up the Q and A that he did show you. I just
10:13 10 want to put up the words.

11 A. Okay.

12 MR. BATCHELDER: Could we put that up, Mr. Fitzgerald,
13 please.

14 MR. FITZGERALD: The words?

15 MR. BATCHELDER: Yes, not the video prep but just put
16 up the written transcript.

17 MR. PACKIN: Can you just tell me the page and line
18 numbers?

19 MR. BATCHELDER: Yes, it's 118 -- let's see -- it was
10:13 20 118, lines 18 through 24 of the deposition.

21 Can you blow that up, please.

22 BY MR. BATCHELDER:

23 Q. Okay. So this is the portion that he showed you. Do you
24 remember that yesterday?

25 A. On the video, yes, I recall that.

1 Q. So he said: "Did those companies that provided those
2 traditional components advertise scalability as an attribute?"

3 And your answer in the deposition was: "I don't know
4 why you're focusing on scalability. That was like -- that's a
5 meaningless term. It really doesn't mean anything
6 technologically."

7 That was in your deposition, right?

8 A. Correct, yes.

9 Q. Yesterday when you and I were talking, you asked me about
10:14 10 context.

11 Do you remember that?

12 A. That's correct.

13 Q. Let's show you the next two Q and As in your deposition
14 that he did not show you.

15 MR. BATCHELDER: Can you put those up, please,
16 Mr. Fitzgerald.

17 A. So I guess this --

18 Q. This is at the top of page 119.

19 A. Yeah --

10:15 20 Q. Actually, it's at the very bottom of 118. The question
21 is: "Scalability is meaningless?"

22 A. Right.

23 Q. Your answer on the top of page 119 --

24 MR. BATCHELDER: Would you go there, Mr. Fitzgerald,
25 the next Q and A, please.

1 MR. FITZGERALD: I have to clear --

2 (Pause.)

3 MR. BATCHELDER: Sorry, just give us one second.

4 Just blow up the top half of that page, please.

5 Q. So he asked: "Scalability is meaningless?"

6 And what was your answer there?

7 A. I said: "Well, it doesn't -- in the way you're describing
8 it, I -- you know, without some context on what you mean by
9 scalability --"

10:15 10 Q. And then he asked: "What do you understand scalability to
11 mean?"

12 And your answer was?

13 A. "It can mean, you know, the ability to provide more of a
14 resource with -- what is scalability in the data center.
15 It's -- there's hundreds of different definitions for it."

16 Q. So "scalability" means one thing in one context and
17 another thing in another context.

18 A. Yeah, that was the point I was trying to make.

19 Q. And coming back to JTX-216, page 6395, when you and I were
10:16 20 talking about the highly scalable in the context of your
21 architecture, does it have a meaning?

22 A. Absolutely.

23 Q. What is the meaning?

24 A. The meaning is that one of the more important attributes
25 of what we were able to provide is -- and, again, this is the

1 first presentation, but that was the design goal, to make it
2 scalable.

3 Q. Okay.

4 A. In this, you know, virtualized data center context.

5 Q. Okay. And then, switching gears, yesterday when you and I
6 were talking, we talked about the April 2004 meeting between
7 Egenera and Cisco.

8 Do you recall?

9 A. Yes, sir.

10:17 10 Q. And you talked about specific conversations you had had
11 with Mr. Hanafi and Ms. Jiandani and Mr. Chapman?

12 A. Yes.

13 Q. And then this morning you were shown a deposition clip
14 that suggested that your testimony was inconsistent.

15 MR. BATCHELDER: But can we put up from the deposition
16 page 78, 8 through 15. From Mr. Brownell's deposition.

17 MR. FITZGERALD: Page 78?

18 MR. BATCHELDER: 78, lines 8 through 15, please.

19 BY MR. BATCHELDER:

10:17 20 Q. So you see in line 8 the question was: "After the meeting
21 with Mr. Hanafi in 2004, you didn't have any other interactions
22 with Cisco?"

23 And you said: "Not in a meeting sense. I may have
24 had a phone call but I don't remember."

25 Do you see the word "after"?

1 A. Mm-hmm.

2 Q. So the conversations that you testified about yesterday,
3 were they before or after the 2004 meeting?

4 A. Those were before.

5 Q. Okay. So anything inconsistent about what you told me
6 yesterday and what you said in your deposition here?

7 A. I don't believe so.

8 Q. Thank you.

9 Let's talk about HP. Let's first put up the document
10:18 10 that counsel showed you this morning, because he invited me to
11 talk about that bottom bullet, and I think I will.

12 MR. BATCHELDER: It was DX-FJ at page -- the page
13 ending in 904.

14 The page ending in 904 -- oh, I'm sorry. So it looks
15 like it's the fourth slide, the one beginning with "revenue
16 growth."

17 I'm sorry, page 5. Yeah.

18 Q. So down to the lower left it says "competition," it says
19 "HP has gained ground."

10:19 20 And then underneath, you pointed out: "Competing
21 against 'good enough' at lower cost."

22 Do you see that there.

23 A. Yes.

24 Q. And what did that mean to you?

25 A. Well, kind of in the industry you sort of say good enough

1 means, you know, kind of the old stuff. If you make it cheap
2 enough, people will buy anything, and that was true in the data
3 center. You could buy the old way that you would put racks and
4 racks of servers in there but didn't have the consolidation or
5 the virtualization or all the features that we talked about and
6 UCS talks about, but it was the old way.

7 And there was a certain point where if it was cheap
8 enough, it was good enough and people would buy it. But it
9 wasn't a competitive product, it was just sort of a sales
10 strategy.

10:19 10
11 Q. Staying on this subject, let's come back to the 2004
12 presentation that was given to Cisco, JTX-263, slide 22.

13 Do you recall you and I talked about this yesterday,
14 these islands of capacity?

15 A. That's right.

16 Q. And where does HP fit into this picture?

17 A. Well, HP, at the time, was a traditional data center --
18 most of their business was in PC -- the actual servers
19 themselves, the middle -- the middle puzzle piece but in the
10:20 20 traditional manner. So --

21 Q. And how did your architecture relate to HP's business
22 model? Was it a good thing or a bad thing for HP?

23 A. Well, if you think about HP, their business was selling
24 lots of servers in the traditional sense, so to some extent our
25 business was designed to reduce the number of servers that you

1 had. So --

2 Q. Let me just stop you there. Can you explain that?

3 A. Well, because we had all of the virtualization and
4 capability and all the ability to do this consolidation and
5 treat your servers as a pool where you could reuse them and you
6 didn't have to have idle servers sitting around, it was HP's
7 business model to basically sell you as many servers as
8 possible. I was a customer at Goldman and I remember that
9 clearly. So it would be kind of crazy for HP to say, I don't
10:21 10 want to sell you more servers, that was their business --

11 Q. They make a lot of money selling them.

12 A. -- trying to sell as many servers as possible, and
13 maintaining these islands of capacity in the traditional sense.

14 Q. Let's just quickly look at the next slide, slide 23.

15 You talked about this one.

16 A. Yeah, so we're actually -- I think this was the one -- we
17 were showing Cisco this. The strategy for Sun and HP at the
18 time, and IBM, was to add one more puzzle piece. So they would
19 have software, which I kind of call the magic puzzle piece, and
10:22 20 an army of consultants to help you try to manage this problem
21 of overwhelming complexity. So they were actually adding more
22 complexity to the situation. They didn't have a clean sheet
23 architected product like Egenera's or later when Cisco copied
24 Egenera's.

25 Q. Okay. And is that what you were referencing when you

1 talked about the extent to which HP was a competitor?

2 A. Yes, I was talking about them competing with us on our
3 architecture.

4 Q. Okay.

5 Let's again switch gears to come back to the topic
6 that counsel mentioned about the purchase of a BladeFrame.

7 First, if we can go to JTX-267 at page 008.

8 And you see in the -- to the left of the green box,
9 four down is Ray Wu.

10:23 10 A. Yes.

11 Q. So he was in Mr. Hanafi's group?

12 A. Yes, I believe his new ventures group.

13 Q. He was not in the IT group?

14 A. No, he was in the new ventures group, which is basically
15 what I refer to as corporate development; you know, they go out
16 looking at acquiring companies, partnering with companies,
17 things like that.

18 Q. Okay. I want to show you a purchase order when Cisco
19 purchased that BladeFrame. It is PX-BWS, and on the last
10:23 20 page -- give me one second.

21 PX-BWS. Here's the purchase order, and on the last
22 page of the document, which is page 5, you'll see who the end
23 user is. Do you see Ray Wu's name there?

24 A. Yes.

25 Q. So is this your point, that it wasn't purchased by IT, it

1 was purchased by Hanafi's group?

2 A. That's correct. It was very odd that the people that
3 enter into partnerships, the people that we had been working,
4 had given the deep dive to, given all our secrets, they were
5 the ones that purchased it.

6 Q. Thank you.

7 MR. BATCHELDER: So, your Honor, I pass the witness.

8 THE COURT: Anything further?

9 MR. PACKIN: Just a few, your Honor.

10:24 10 RECROSS-EXAMINATION

11 BY MR. PACKIN:

12 Q. Okay. So this HP thing has become a big deal, so I just
13 want to follow up on the board of directors and what you were
14 asked about.

15 Now, you're saying HP was selling a different kind of
16 product, that's your point?

17 A. Yes. A traditionally architected server.

18 Q. So not virtual I/O, in other words?

19 A. I don't recall whether they ever came out with a virtual,
10:25 20 you know, equivalent program.

21 Q. Okay.

22 A. You know, it may have been virtual I/O, it wasn't a
23 BladeFrame, or a UCS kind of product.

24 Q. Okay. So just on the revenue, regardless of what kind of
25 product that they were selling, the 2008 revenue growth issues

1 that you had under "Competition," it says "HP has gained
2 ground," right?

3 A. Because of their ability to undercut pricing with their
4 traditionally architected servers.

5 Q. Okay.

6 A. But that wasn't what I was referring to, but it's okay.

7 MR. PACKIN: No further questions, your Honor.

8 THE COURT: All right. Thank you very much,

9 Mr. Brownell. That concludes your testimony.

10:26 10 Let's have the next witness.

11 MR. BATCHELDER: May I offer, your Honor, PX-BWS as
12 JTX-490, please.

13 THE COURT: Yes.

14 MR. BATCHELDER: Thank you.

15 (Exhibit JTX-490 received into evidence.)

16 MR. BATCHELDER: And may this witness be excused?

17 THE COURT: Yes. Mr. Brownell is excused.

18 MR. BATCHELDER: Thank you, your Honor.

19 THE COURT: Go ahead with your next witness.

10:27 20 MR. THOMASES: Good morning, your Honor. Plaintiff
21 Egenera calls Mr. Pete Manca.

22 PETER MANCA, having been duly sworn by the Clerk, was
23 examined and testified as follows:

24 THE CLERK: Thank you. You may be seated.

25 Would you please introduce yourself, spelling your

1 last name for the record.

2 THE WITNESS: Sure. My name is Peter Manca,
3 M-a-n-c-a.

4 DIRECT EXAMINATION

5 BY MR. THOMASES:

6 Q. Good morning, Mr. Manca.

7 A. Good morning.

8 Q. Can you please tell the jury where you currently live.

9 A. I currently live in Falmouth, Massachusetts.

10:27 10 Q. And have you lived in Massachusetts your whole life?

11 A. I have.

12 Q. Where in Massachusetts did you live when you grew up?

13 A. I grew up in Gardner, Massachusetts, a small town in
14 central Mass. I really lived there my entire adult life until
15 maybe last year when I moved to Falmouth.

16 Q. And where did you go to college, please?

17 A. I went to college in Worcester at Worcester Polytechnic
18 Institute.

19 Q. And what was your degree in?

10:28 20 A. I have a Bachelor's of Science in electrical engineering,
21 and I have a Master's in Science in electrical engineering as
22 well.

23 Q. Did you work at all during college?

24 A. I did, I worked all throughout college; work study,
25 weekends at local grocery stores, worked my way through

1 college.

2 Q. And where do you currently work?

3 A. I work for Dell Technologies.

4 Q. And what's your current title at Dell Technologies?

5 A. Senior vice president of products for our cloud division.

6 Q. And did you ever work at Egenera?

7 A. I did, from June of 2000 until March of 2018.

8 Q. So you haven't worked at Egenera since March of 2018?

9 A. That's correct.

10:28 10 Q. And could you give the jury, please, some background of
11 your work experience before Egenera.

12 A. Sure. I started my career at a company called Data
13 General in Westborough. From there, went to a startup company
14 shortly after school and -- a startup called Encore Computers.
15 After Encore, went to Prime Computers, Racal Interlan, and then
16 eventually Hitachi Computer Products, which was a subsidiary of
17 Hitachi, and that was my previous job before Egenera.

18 Q. When you started at Egenera in 2000, what month,
19 approximately, was that?

10:29 20 A. That was June; I think it was June 6, 2000.

21 Q. And what was your role when you started at Egenera?

22 A. I was vice president of software engineering.

23 Q. Can you just explain for the jury briefly what is software
24 engineering?

25 A. Sure. A complex computer system or a large computer

1 system typically has hardware components, the physical
2 components, CPU, server, memory, disk, et cetera; and then
3 there's the soft components, or the software that runs the
4 hardware. And so as head of software development for Egenera,
5 my job was to manage the team that wrote the software that
6 controlled the BladeFrame hardware.

7 Q. And in -- as part of that role, did you and your team have
8 to understand the hardware to write the software for it?

9 A. Oh, absolutely.

10:30 10 Q. And were you promoted during your time at Egenera?

11 A. I was.

12 Q. What roles did you have after first joining?

13 A. After the VP of software role, I became senior vice
14 president of engineering, so I managed both hardware and
15 software engineering teams.

16 Q. After that?

17 A. After that I became chief technology officer, and then
18 became chief executive officer for the last nine years of my
19 time at Egenera.

10:30 20 Q. Why did you choose to join Egenera?

21 A. There was a lot of reasons. First, I'd spent ten years at
22 Hitachi, large Japanese company. Ten years is a long time at a
23 large Japanese company. But I got a phone call from an old
24 colleague of mine, told me about this gentleman, Vern Brownell,
25 who was starting a company; and I met Vern for lunch, and he

1 had such a compelling idea, I thought it would be an exciting
2 opportunity.

3 I've always had a bit of an entrepreneurial spirit. I
4 mentioned I was at a startup company early in my company. I
5 grew up around businesses. My father was a local business
6 owner in the Gardner area. He passed when I was very young,
7 but I think it left an impression on me that I wanted to be a
8 startup person. That, combined with Vern's vision was just
9 very compelling.

10:31 10 Q. And what was it about Vern's vision that attracted you?

11 A. Well, first he was coming from a customer. He was coming
12 from Goldman Sachs, and he was trying to solve a real-world
13 problem. A lot of times you start companies, you don't have
14 that customer input. He had that -- he was a customer, and so
15 he had the right perspective.

16 And then he was trying to solve a problem that just
17 seemed interesting to me. The complexity of establishing or
18 deploying servers in a data center and then redeploying and
19 reconfiguring servers and how hard that was back then, trying
10:32 20 to solve that problem just seemed very interesting to me.

21 Q. Did you have any concerns about leaving an established
22 company like Hitachi for a startup company like Egenera?

23 A. Sure, it's only natural. I mean, it's a risky venture any
24 time you go to a startup company, so there's concerns for sure.
25 Again, I was so compelled by the concept and the vision he had

1 that I thought it was worth the risk.

2 Q. And when you started at Egenera, where was it located?

3 A. It was located in Bolton, Massachusetts in the basement of
4 a dentist office.

5 Q. And during your work there, did you help solve the problem
6 that was going to be solved by Vern's vision?

7 A. We did, we did. We -- you know, we white-boarded, we
8 talked through all the problems. We tried to figure out how do
9 you write software and develop hardware to solve this problem,
10:33 10 and I think we very much did.

11 Q. And when you mention "we," can you tell us a little bit
12 more about the team that you worked with?

13 A. Sure. We hired a very experienced team. You know, we
14 knew we were developing some pretty sophisticated, leading-edge
15 products and so we hired a team of experienced hardware and
16 software engineers.

17 Q. Did the project have a name early on in the life of
18 Egenera?

19 A. Early on it was called the Interframe.

10:33 20 Q. And did the Interframe ever come to have a retail or
21 market name?

22 A. Sure. We productized it, we productized it as the
23 BladeFrame, and we had software that managed the BladeFrame
24 called PAN Manager, which was the name of the software for that
25 product.

1 Q. And that is P-A-N Manager?

2 A. That's correct, P-A-N.

3 Q. What does the P-A-N stand for?

4 A. Processing area network.

5 Q. Was that something that was inside of the BladeFrame?

6 A. Yes, processing area network software ran on the control
7 nodes and managed the entire BladeFrame.

8 Q. During this time, did your team create documents about the
9 development of the BladeFrame?

10:34 10 A. Sure. We wrote functional specifications. We wrote
11 product requirements documents. We wrote architecture specs.
12 We wrote status reports. There was a lot of corresponding
13 documentation.

14 Q. And in approximately what time frame was the concept
15 crystallized, Vern's vision and the plan for the BladeFrame?

16 A. I mean, it was probably crystallized in late 2000, late
17 fall of 2000 as -- you know, as we formed the team and we were
18 trying to figure out how to solve the problems, you know, we
19 had architecture specs and documentation around September time
10:35 20 frame or so in 2000 that really, I think, crystallized the
21 architecture.

22 Q. And did the team work on building a prototype, an actual
23 machine to test?

24 A. We did. I mean, that was really the first big step for
25 us, we prototyped the hardware and the software and we put that

1 together -- I think in April of 2001 we had our first prototype
2 machine.

3 Q. Was that a big event at the company?

4 A. It was a huge event. We saw all these specifications and
5 all these things that we had been working on come together,
6 come to life in a physical box. It was very exciting.

7 Q. Around that time, did Egenera file anything with the
8 patent office?

9 A. Yes, I think around the same time we filed the provisional
10:36 10 patent.

11 Q. And is that like a preliminary placeholder patent
12 application?

13 A. That's exactly what it is.

14 Q. And what happened next in terms of that prototype and
15 working on the BladeFrame?

16 A. Well, we continued to work on it, flush it out, debug it,
17 get it working. We then -- we go from prototype to beta, which
18 is a very -- sort of think of that as a preproduction machine
19 that you can give to customers to help you test before you get
10:36 20 to production.

21 Q. And during this time frame, was Egenera working on any
22 other products?

23 A. No, this was our sole focus.

24 Q. And did there come a time when you actually had a
25 production BladeFrame for sale to customers?

1 A. There was, it was in fall of 2001 where we had our first
2 production machines.

3 Q. Was that approximately October of 2001?

4 A. That sounds about right, October.

5 Q. Do you recall who the first customer was?

6 A. I do, Credit Suisse First Boston.

7 Q. And how was the BladeFrame received?

8 A. Very well.

9 Q. Do you recall proceeding any further with patent
10:37 10 applications?

11 A. Yeah, we filed the formal application in, I think, January
12 of 2002.

13 Q. And do you recall what happened at the patent office with
14 respect to that patent application?

15 A. We worked with the patent office for many years, I think
16 five years, working through the patent before it was officially
17 granted. We were trying to get the patent as accurate as we
18 possibly could.

19 Q. Do you recall whether the patent office awarded you the
10:37 20 '430 patent?

21 A. They did indeed, yes.

22 Q. Do you recall approximately when that was?

23 A. June of 2007, I think -- June 12th sticks in my mind, but
24 June of 2007.

25 Q. And was Egenera excited to hear that news?

1 A. Extremely excited. I mean, this was -- this was the thing
2 on paper that, you know, we all had been working towards, and
3 the patent office granted us a patent saying this is very
4 unique technology, and we were very excited.

5 MR. THOMASES: Can we please -- your Honor, might I
6 approach the witness with a binder, and the bench with a
7 binder?

8 THE COURT: Yes, you may.

9 MR. THOMASES: Thank you.

10:38 10 (Pause.)

11 MR. THOMASES: Can we please put up PX-BUJ, which is
12 tab 2 in the binder.

13 And, your Honor, there are no objections to this
14 exhibit, so we would like to have it entered as JTX-491.

15 THE COURT: Okay.

16 (Exhibit JTX-491 received into evidence.)

17 MR. THOMASES: Thank you.

18 BY MR. THOMASES:

19 Q. What do you see at JTX-491, formerly PX-BUJ?

10:39 20 A. This looks like an email I sent to the entire company. I
21 know it was the entire company because it says to
22 "all@Egenera," which would be the entire company; announcing
23 that we had won this big patent. It says: "We won another
24 patent."

25 We had other patents that we had won, but this was

1 the big one, and I'm announcing that in this mail.

2 Q. And why do you put "big" in all caps with an exclamation
3 point?

4 A. This was the one. This was the processing area network.
5 This was the patent that covered the BladeFrame, the processing
6 area network. This was really the thing we had been working on
7 for years and years.

8 Q. Is that what you meant when you give the title of the
9 patent and say: "We like to call it PAN"?

10:40 10 A. That's right, processing area network.

11 Q. And you say: "After many, many years we were finally
12 granted the patent for the processing area network
13 architecture," and you give the patent number, correct?

14 A. That's correct.

15 Q. And it looks like you thanked the inventors for their
16 contributions?

17 A. Yes, certainly, there was a lot of work for these people
18 and it was good to recognize them.

19 Q. The next paragraph, this may be a little obvious, but it
10:40 20 starts with "This is a huge milestone in our history." What
21 did you mean by that?

22 A. Well, you think about starting a company and building
23 intellectual property, building a product, you want to protect
24 that intellectual property, you want it to be patented, I think
25 that's the dream of every inventor. It took a long time, as

1 you can see, but we received this. It was just a big
2 milestone. It was very exciting for us.

3 Q. The next sentence says: "This was the first patent we
4 applied for and it represents a significant part of our IP."

5 What did you mean by that?

6 A. Intellectual property. This was the patent that covered
7 the bulk of everything that we did.

8 Q. Did you announce the issuance of the '430 patent to the
9 public?

10:41 10 A. We did.

11 Q. Why did you?

12 A. Well, we wanted everybody to know we had patented our
13 technology but, you know, it was a great milestone for the
14 company, so it was good for the employees to see that, but it's
15 also -- frankly, it's a way to market your product and company
16 as well, to customers or partners.

17 Q. Can you please turn to tab 3 in the binder, which is
18 PX-BGA.

19 MR. THOMASES: Your Honor, there are no objections, so
10:41 20 we'd like to move it in as JTX-492, please.

21 THE COURT: Very well.

22 MR. THOMASES: Thank you.

23 (Exhibit JTX-492 received into evidence.)

24 BY MR. THOMASES:

25 Q. Do you recognize this document?

1 A. I do.

2 Q. What is it?

3 A. That is the press release announcing the patent for the
4 processing area network, the '430 patent.

5 MR. THOMASES: And the jury has seen it before, but
6 can we put up JTX-1, tab 4, which is the '430 patent.

7 Q. Is this the patent that you're referring to as being
8 issued June 12, 2007?

9 A. Yes, it is.

10:42 10 Q. And if you look at the inventors, it identifies
11 Mr. Brownell and yourself as the first two inventors, correct?

12 A. That's correct.

13 MR. THOMASES: Can we turn to Fig. 1 of the patent,
14 please. It's on the fourth page and we can rotate. There we
15 go.

16 Q. So there's -- well, first of all, what is this figure
17 depicting, at a high level?

18 A. This is -- at a high level, this is the architecture of
19 the BladeFrame PAN Manager. This is the embodiment of the
10:43 20 patent.

21 Q. And do you understand that a drawing in a patent can just
22 be an example of the full invention?

23 A. Yeah, exactly right, yes.

24 Q. All right. So there's a lot of technical details here,
25 and we want to break them down a bit further.

1 But, first, can we go to page 18 of the patent, which
2 is columns 1 and 2.

3 All right. Here it has the title at the top of the
4 page.

5 Do you see that?

6 A. I do.

7 Q. And then down around line 14, it has the field of
8 invention, and it says: "The present invention relates to
9 computing systems for enterprises and application service
10:43 10 providers and, more specifically, to processing systems having
11 virtualized communication networks and storage for quick
12 deployment and reconfiguration."

13 Was that the field of the invention?

14 A. Yeah, that was, that was a good summary.

15 MR. THOMASES: And then if we could just zoom out a
16 little bit please, Mr. Fitzgerald.

17 Q. And there's a section called "Discussion of Related Art,"
18 it gives some background.

19 Generally speaking, what does this section describe?

10:44 20 A. This is describing the problems, you know, that legacy
21 servers or traditional servers faced in the data center at the
22 time. So I have to scan it real quick, but it's looking like
23 it's talking about how complicated it is to purchase equipment,
24 deploy equipment, redeploy them, connect them to, you know,
25 other parts of the data center. So this is sort of discussing

1 what the problems were at the time.

2 Q. And was part of the goal of the invention to overcome
3 those problems?

4 A. Yes.

5 Q. Okay. If you look over at column 2, please, there's a
6 section called "Detailed Description."

7 Do you see that?

8 A. Yes.

9 Q. Okay. And it begins, it says: "Preferred embodiments of
10:45 10 the invention provide a processing platform from which virtual
11 systems may be deployed through configuration commands. The
12 platform provides a large pool of processors from which a
13 subset may be selected and configured through software commands
14 to form a virtualized network of computers, ('processing area
15 network' or 'processor clusters') that may be deployed to serve
16 a given set of applications or customer."

17 Can you explain that a little more, please.

18 A. So part of the problem we were trying to solve was to very
19 quickly take a set of resources, computer server resources in
10:45 20 this case, and configure them or connect them so they could be
21 rapidly deployed for applications that a customer might want to
22 run. So this is describing that we were able to do that
23 through a set of commands rather than sort of physical activity
24 of configuring and setting up servers.

25 Q. Rather than like cabling and --

1 A. That's right.

2 Q. -- going in and changing hardware?

3 A. That's right.

4 Q. And the next sentence says: "The virtualized processing
5 area network, PAN, may then be used to execute customer
6 specific applications, such as web-based server applications."

7 A. Right. So once the PAN was configured and set up, it was
8 then available for the customer to run applications. The
9 example here is web-based applications, but it could be trading
10:46 10 applications, banking applications, email, whatever the
11 customer wanted.

12 Q. And the virtualization, it says: "The virtualization may
13 include virtualization of local area networks (LANs) or the
14 virtualization of I/O storage."

15 A. Yes.

16 Q. Can you explain that a little bit more.

17 A. So these servers have to be connected physically to
18 networking, so other -- either other applications or other
19 people can connect to them, and then they also have to be
10:47 20 connected to storage devices because these applications for
21 these large data center customers tend to have lots of storage,
22 so they're typically on separate storage devices. And, you
23 know, typically that is physical connections, wires, going to
24 each of these networks or I/O storage.

25 What we did is we virtualized that, we made them

1 software components, and so it was much easier to configure or
2 reconfigure connections to these networks and storage.

3 Q. And just one more sentence.

4 The next sentence says: "By providing such a
5 platform, processing resources may be deployed rapidly and
6 easily through software via configuration commands, e.g., from
7 an administrator, rather than through physically providing
8 servers, cabling network and storage connections, providing
9 power to each server and so forth."

10:47 10 A. Right.

11 Q. I think you kind of just explained that, anything more to
12 add there?

13 A. Well, that was the magic of the system, was you take away
14 the physical connections and you replace them with virtual or
15 software versions of those. It makes it much easier to
16 configure or reconfigure, which was really the problem we were
17 trying to solve.

18 Q. Let's turn back to Fig. 1 of the patent, please.

19 Do you see on the left there are boxes called
10:48 20 "processing node"?

21 A. I do.

22 Q. Inside one of them it has an item 107.

23 Do you recall what that is?

24 A. Yeah, those are the NICs on the processing nodes,
25 specifically Gigabit NICs because that was the switch fabric

1 that we used.

2 Q. Just to avoid using too many acronyms, what does NICs or
3 N-I-C stand for?

4 A. Network interface card. That's how you would typically
5 connect to a network. In this case it's connecting to our
6 internal network, which was Giganet.

7 Q. So the BladeFrame processing nodes did have Giganet NIC on
8 each blade?

9 A. They did, they had two on each blade.

10:49 10 Q. If you look in the box below there's items 106j and 106l.
11 What are those, please?

12 A. I think those are representing the CPUs or the processing
13 units on the blades.

14 Q. And although the picture is simplified to show just one
15 box that has those components, and one box that has 107, did
16 the processing nodes all have CPUs and Gigabit NICs?

17 A. Yes, they all did.

18 Q. There are three dots between the first two boxes and then
19 the second two boxes, what does that represent?

10:49 20 A. That just means there were multiple processing blades in a
21 BladeFrame or a processing area network so the picture shows, I
22 think, just four nodes but there was really up to 24 in each
23 BladeFrame.

24 Q. Let's turn to the patent --

25 THE COURT: Can we maybe stop for the break. I'm sure

1 we're all finding this very helpful, but it is --

2 Let's take the 25-minute recess now, jurors. We'll
3 come back at 11:15 and go forward with the examination.

4 THE CLERK: All rise.

5 (Recess taken.)

6 (The jury entered the courtroom.)

7 THE CLERK: Resuming on the record, Civil Action
8 16-11613, Egenera versus Cisco.

9 THE COURT: I think you can resume.

11:16 10 MR. THOMASES: Thank you, your Honor.

11 **DIRECT EXAMINATION, Cont'd.**

12 **BY MR. THOMASES: :**

13 Q. Before the break, Mr. Manca, we were discussing the '430
14 patent. Do you recall that?

15 A. I do, yes.

16 Q. And we were discussing figure 1 that had processing nodes
17 with gigabit NICs and CPUs on them; correct?

18 A. Yes.

19 Q. Can we please turn to the patent to column 3, lines 13 to
11:16 20 15. And here it says, "Each processing node, 105 is a board
21 that includes one or more EG4 processors, 106 J-L, one or more
22 network interface cards, NICs 106 and local memory." Do you
23 see that?

24 A. I do.

25 Q. Was that true for the BladeFrame?

1 A. Yes.

2 Q. And so the BladeFrame did have NICs on the processing
3 blades; correct?

4 A. Absolutely.

5 Q. Can we please turn to JTX 1 the patent, column 11, 4 to
6 15.

7 Here it's describing a Giganet driver and it describes Giganet
8 NIC 107, that same number as in the figure 1. Is that the NIC
9 that is on each of the processing blades in the BladeFrame?

11:17 10 A. Yes, it is.

11 Q. And if you look at the next paragraph, it says, "Giganet
12 driver 320 is responsible for allocating memory in each node
13 for buffers and queues for the VIs and for conditioning the NIC
14 107 to know about the connection and its memory allocation."
15 Can you explain that a little, just briefly, for the jury?

16 A. So the driver is the code that's responsible for setting
17 up the NIC. So in order to create communications between
18 different nodes on a network, you've got to configure those
19 NICs so they can talk to the other nodes, so the drivers
11:18 20 responsible for doing that programming or configuration.

21 Q. And so conditioning the NIC means programming the NIC?

22 A. Yes.

23 Q. Were you here yesterday for Cisco's attorney's opening
24 argument?

25 A. Yes, I was.

1 Q. And do you recall Cisco's attorney saying that the
2 BladeFrame system only programs the CPUs during setup of the
3 network?

4 A. Yes, I do recall that.

5 Q. Is that an accurate statement of the BladeFrame?

6 A. No, it's not.

7 Q. And is that -- well, why is that?

8 A. Well, the NICs have to be programmed. It wouldn't work
9 otherwise. We have to set up the initial network, program the
10 NICs so they knew about the connectivity, and then from there
11 we could program the CPUs.

12 Q. So the PAN Manager software and the BladeFrame would
13 program both the NICs and the CPUs?

14 A. That's correct. PAN Manger is living on the control blade
15 and it would program the NICs and the CPUs.

16 Q. Can we go back to figure 1, please, of the '430 patent.
17 Now, we kind of promised the jury we would explain this in a
18 little more detail. Did you create any visual aids to help
19 explain this?

11:19 20 A. Yes, I think we have some.

21 Q. Can we turn to PDX 7.

22 Can you please explain what is on the screen here regarding
23 legacy servers on slide 2?

24 A. Sure. Think of this as a very basic legacy server. It's
25 got some processing called CPUs, it's got some memory called

1 RAM, it's got connections to networks for the NIC cards, and
2 connections to the storage devices that are called HBAs.
3 Again, very simplified version of a server. But that's what
4 this is depicting here.

5 Q. And actually you have two gray boxes. Is this depicting
6 two sample servers?

7 A. Yes, two servers. That's right.

8 Q. And "legacy" means before the BladeFrame?

9 A. Yes. Yes, in this terminology. Yes.

11:20 10 Q. Okay. I'm going to show you the next image, slide 3, and
11 if you could just explain for the jury what's being depicted
12 here?

13 A. So we've got these two legacy servers and they're running
14 a human resources application, so the HR functions for the
15 company. And these HR applications require network
16 connectivity. So there's connections to the local area network
17 from the NICs and it requires some storage. So there's
18 connections to the storage devices through the HBA. So those
19 would literally be physical wires connecting the networking and
11:20 20 the storage devices to the servers.

21 Q. I'm going to advance and to slide 4. What are you showing
22 here?

23 A. So another typical application for a company would be an
24 email server. And so this email server, again, needed
25 connectivity to the network, needed connectivity to the

1 storage. In this case, there's actually four NICs because,
2 apparently, this email server needed more networking
3 connectivity than it needed storage connectivity. So this is
4 an example of how servers can be configured differently for
5 various application needs.

6 Q. So you couldn't necessarily use that email server for the
7 HR application?

8 A. Well, you could but you'd have two extra NICs so it would
9 be over-provisioning. It would be a waste of money. You could
10 use it but it's not ideal.

11 Q. It requires some changing of hardware and cabling?

12 A. It could, or you would over-provision and waste those
13 extra NICs.

14 Q. I'm going to advance to the next slide, slide 5. I'll ask
15 you what you are depicting here?

16 A. So this is a banking application. Typically way more
17 complex than an email or HR application. You can see that not
18 only does it require four NICs, but it requires, if I can count
19 correctly, I think it's eight HBAs or eight storage connections
20 because this particular banking application needs a lot of
21 access to storage.

22 So, again, a very simplified server. A very small handful of
23 legacy servers here. Imagine if this were a large company that
24 had thousands of these things; this picture would be much more
25 complicated.

1 Q. And each one of the red and green lines is an actual
2 physical cable; correct?

3 A. That's correct.

4 Q. So if you had dozens or hundreds of servers it could start
5 looking like that photo I showed in the opening statement?

6 A. It absolutely would.

7 Q. And could the email server as is configured right there
8 run banking?

9 A. Yes, but not well. Right? So you could put the
11:22 10 application in the email server but it would have limited
11 access to storage. So it wouldn't perform very well. So it
12 would be -- it would be impaired if you ran it on that
13 particular server.

14 Q. And so is that why the servers are custom configured for
15 each of their business applications?

16 A. That's exactly right. Applications have certain dynamics
17 or certain requirements from the underlying physical systems
18 they run on. And so typically you would configure your server
19 as best you could for the application that was running on it.

11:23 20 Q. And in the legacy system, when you say configure a server,
21 that means someone physically going into the hardware and
22 changing it?

23 A. That's right. You would either purchase it special with a
24 configuration or you would purchase a server and then add HBAs
25 or NICs to make that configuration what you wanted for that

1 application.

2 Q. It would also require some additional software
3 configuration at the same time?

4 A. It could. It could require additional software, or could
5 require additional hardware and people to do those
6 configurations.

7 Q. So did you depict how to solve this problem in these
8 illustrations?

9 A. Well, this was the essence of the PAN Manager. Right? So
11:23 10 if you think about what one of the big complexity factors is
11 here it's just all this connectivity between the servers and
12 the networks, whether it's storage or LAN. So what we want to
13 do is get rid of that complexity.

14 Q. I'm going to advance the slide to slide 6. And the gray
15 boxes are gone. This is obviously just a step-by-step process
16 teaching the invention?

17 A. Right.

18 Q. So we're now out of the realm of legacy servers?

19 A. We're not out of the realm of legacy servers yet. These
11:24 20 still have all the NICs and HBAs on them.

21 Q. Let me advance the slide. Can you explain what's going to
22 be shown here?

23 A. What we're seeing is, look, what if you could pool all
24 these connections into a central location and reduce the amount
25 of connectivity needed on a server down to two NICs. In this

1 case we're showing two gigabit NICs for each processing blade.
2 And then all the application-required NICs and HBAs were
3 centralized in the control node, and they were centralized as
4 software components rather than hardware components.

5 Q. And the control node that's depicted here is connected to
6 the LAN and the SAN, storage area network?

7 A. That's right. So rather than having each individual
8 legacy server have connections into the LAN and SAN, the idea
9 was to have a central location that had connections to the LAN
10 and SAN, removing all that complexity and all those physical
11 wires as well.

12 Q. And you mentioned NICs that were G NICs. What does that
13 stand for?

14 A. Again, those were the gigabit NICs. These were the two
15 NICs that we left on each processing blade because we needed to
16 have some connectivity to this pool of virtual HBAs and virtual
17 NICs. So you need to have some kind of a NIC there.

18 Q. Let's advance the slide a little. And here now on
19 slide 7 it's showing purple processing node, each with two CPUs
20 RAM and two G NICs; is that right?

21 A. Right. So one of the other, I want to say magic of the
22 patent or the invention, but one of the other important
23 concepts here is that you now take the processing node, you
24 make it generic, you make it all purpose. So you can apply any
25 configuration to it. Any application could run on it at any

1 time. So that was very important as well.

2 Q. And I'm just going to advance the slide to help explain
3 things. What are we showing here with the green switch fabric
4 connected to the processing node?

5 A. Right. So instead of having all those wires connected
6 from the previous version of the legacy servers, you would put
7 all of that LAN and storage traffic over switch fabric, which
8 would then go to the control node and it would talk to the
9 external LAN and SAN. So this was a high-speed network that
11:26 10 connected the anonymous or the all-purpose blades, if you will,
11 to the control nodes.

12 Q. And was this switch fabric inside the BladeFrame?

13 A. Yes, it was.

14 Q. So it wasn't external wires and cables?

15 A. No, no. It was part of the BladeFrame.

16 Q. And the switch fabric is connected to the control node?

17 A. It is.

18 Q. So then on the next slide we have PAN and these kind of
19 clouds on the left side. What are you depicting there?

11:27 20 A. Well, if you think back to the legacy server discussion,
21 we had multiple types of applications running. We had HR,
22 email, banking. In this scenario we have the same types of
23 applications, the email servers running on -- the email
24 applications running on two processing nodes, HR on one, and
25 banking is running on the remainder, it looks like, four

1 processing nodes. And so they'll do their activity and connect
2 to LAN and SAN via this fabric switching control node.

3 Q. And the connections to the LAN and SAN are just fewer
4 connections; is that right?

5 A. Fewer connections, absolutely.

6 Q. We also discussed utilization of computing resources. Do
7 you recall that?

8 A. Yeah. I mean, one of the big problems we were trying to
9 solve, imagine in this scenario that maybe the email server
11:28 10 didn't need two processing servers. Maybe it didn't need two
11 processing nodes. Maybe the banking system needed more
12 capacity. I mean, this is a -- obviously, this is a banking
13 customer and that's their primary application. In a legacy
14 environment you'd have to go off and purchase new equipment.
15 You'd have to configure that equipment for the banking
16 application. That could take weeks or months. So that was a
17 real challenge at the time.

18 Q. How did the BladeFrame overcome that challenge?

19 A. Well, because we made these processing nodes all purpose,
11:28 20 we were able to apply what we called server personalities. We
21 were able to change the configuration dynamically through the
22 use of software so that an email application, for example,
23 could be turned into a banking application server dynamically
24 in a matter of two minutes.

25 Q. Did you depict that example here?

1 A. Yes.

2 Q. All right. So let's slowly walk through that. Right
3 there, we changed the color of one of the arrows for email to
4 one of the servers?

5 A. Right. So in this scenario it goes along with the
6 explanation I was just saying. In this scenario, maybe the
7 email application didn't need two processing nodes. So you can
8 turn it off and leave it there sitting, or you could
9 over-provision your processing nodes and it would be kind of a
10 waste of money.

11 In the PAN system we can turn that off and we can reprovision
12 that processing node to be a banking, a node for a banking
13 application.

14 Q. So it, in the next iteration, on slide 9, the black arrow
15 is now gone so email is only running on one processing node?

16 A. That's right. So it's been right-sized for what it needs.

17 Q. Advance to the next, and you mentioned banking needed more
18 processing; right?

19 A. That's right.

11:29 20 Q. So --

21 A. So now what we do here is we repurpose that processing
22 blade for the configuration necessary to run a banking
23 application.

24 Q. So that was all done on-the-fly through software?

25 A. That was done completely in software in a matter of

1 minutes.

2 Q. So the company just got all this extra banking computing
3 power but without having to wait for the purchase of a new
4 server; is that right?

5 A. That's right. Or having to purchase extra servers and
6 have them in storage to use when you need them, which is a
7 waste of money and resources.

8 Q. Now, we looked at figure 1 of the patent. Did you depict
9 how this relates to figure 1?

11:30 10 A. We did. I mean, it's a pretty nice map to figure 1 in the
11 patent.

12 Q. Okay. If we watch the screen we could see how that works;
13 right?

14 A. Right. So if you think of the color coding in the
15 previous slide, the processors, the switch, the control nodes
16 and the external communication networks, this is exactly how it
17 maps to the figure 1 in the patent application, or the patent,
18 I should say.

19 Q. Thank you, Mr. Manca.

11:31 20 Let's talk a little bit about your time at Egenera. You had
21 mentioned that you were a Vice President, Senior Vice President
22 and CTO and CEO. Were you familiar with the total revenues
23 that Egenera earned during your time there?

24 A. I was, yes.

25 Q. And that includes the time period from 2000 to 2007?

1 A. It does. We were a small company so we were generally
2 aware. I certainly was more intimate with the numbers when I
3 became CEO, as you'd expect. Even as CTO when I was, you know,
4 I had an executive level, but in general I had a good idea of
5 the numbers.

6 Q. And did you have an opportunity to recently review the
7 financial numbers?

8 A. I did, yeah.

9 Q. And do you have a slide or a graph to show the revenues at
11:32 10 Egenera?

11 A. I do.

12 Q. And these would be total revenues; is that right?

13 A. That's correct.

14 Q. We have on the screen PDX 7, slide 13. And what is this
15 depicting?

16 A. This is our total revenues from inception in 2000 all the
17 way to 2007.

18 Q. And can you just read the numbers into the record, please?

19 A. Sure. I mean, in 2000, of course, we had no revenue
11:32 20 because we were just starting the company. 2001, as I
21 mentioned earlier, we had our first customer, Credit Suisse
22 First Boston, and we did \$179,000 of revenue that year. In
23 2002 we had \$12,978,000. In 2003, a little over \$41 million.
24 In 2004, \$72,760,000. And then in 2005, \$80,495,000. And then
25 in 2006, \$104.6 million. And in 2007, \$105.5 million. So, you

1 know, that certainly aligns with my recollection of the revenue
2 ramp.

3 Q. And why is looking at total revenues for the company
4 important?

5 A. Well, that's what we were measured on was total revenue.
6 You know, I understand revenue can be a combination of product
7 and services revenue but, you know, we were measured on total
8 revenue.

9 Q. Does this data show that Egenera was a failing company
10 between 2000 and 2007?

11 A. No. In fact, it's -- that's a very steep revenue ramp for
12 a startup company. In fact, I think it was probably one of the
13 fastest growing ones around.

14 Q. And you mentioned revenues for services. Does that
15 include PAN Manager type services?

16 A. Sure. Typically services revenues are either break-fix,
17 in other words, if something breaks, we go out and fix it,
18 that's part of the service contract, or it may be a
19 professional services deal where we're helping a customer deal
20 or set up their system and we would charge for that as well.

21 Q. Even if product sales might be level one year, the revenue
22 still went up because of PAN Manager services and other
23 services?

24 A. That's correct.

25 Q. And products from 2005 to 2006, that revenue went up;

1 correct?

2 A. It did go up.

3 Q. Were you here yesterday when Cisco's counsel was writing
4 on his timeline?

5 A. I was.

6 Q. Okay. Let's put that up, please. We have a photo of it.
7 And this is the timeline Cisco's counsel put on and drew on
8 with a marker to discuss revenues; correct?

9 A. Yes. I couldn't see from where I was sitting but I see
11:34 10 from the picture here, yes.

11 Q. Okay. For total revenues, is this an accurate depiction
12 of your revenues?

13 A. No. I think, as I just showed you, we had increasing
14 revenues. And so, no, this graph or this line doesn't make
15 sense to me.

16 Q. And, in fact, even comparing just looking at product
17 revenues from 2005 to 2006 Egenera's product revenues
18 increased; is that correct?

19 A. That's correct.

11:35 20 Q. Do you recall Cisco's counsel mentioning Egenera's plans
21 to pursue an initial public offering?

22 A. I do.

23 Q. Do you have a memory of why Egenera decided not to pursue
24 an IPO or initial public offering?

25 A. I do.

1 Q. What is your recollection?

2 A. We tried to go public, I think the year was '04, and went
3 very far down the path. And we were advised by a financial
4 analyst to hold off on our IPO because they felt our revenue
5 was too concentrated in the financial services sector. So they
6 wanted us to broaden our customer base to go beyond financial
7 services.

8 Q. Do you recall Cisco's attorney saying something different
9 yesterday?

11:36 10 A. I do.

11 Q. Can we please put up the trial transcript from yesterday
12 at page 56, lines 16 to 20.

13 Here it says, "So they canceled the IPO. They filed paperwork
14 for an IPO in 2004, they canceled in 2005 because they were
15 getting too many complaints about the product, competition in
16 the market had leveled their sales off, so their sales started
17 to level off. And Cisco told them they were not buying them."
18 Do you recall that?

19 A. I do.

11:36 20 Q. Is that accurate?

21 A. No, that's not accurate at all.

22 Q. Again, we just saw, had your sales leveled off?

23 A. No. No.

24 Q. And it mentioned here about too many complaints about the
25 product. Was the reason you decided not to go with an IPO

1 because you were getting too many complaints about the product?

2 A. No, it had nothing to do with it. Even that last line
3 about Cisco told them, I don't know why that would have
4 anything to do with it either. If we were going to go public,
5 we would have gone public rather than have Cisco buy us. None
6 of this really makes sense to me.

7 Q. Did Egenera have some technical support complaints from
8 time to time?

9 A. Oh, sure. Every company has technical support. I get
11:37 10 updates on my iPhone every single day with bug fixes on minor
11 applications. Right? My Solitary game updates a lot. Right.
12 So it's natural for companies to have problems. You get a
13 problem, you fix it. That's what we do.

14 Q. Based on your work history at several different companies,
15 including a large company like Hitachi, how was Egenera's, I
16 guess, technical complaints compared to these other companies?

17 A. Look, I think we had one of the best quality products in
18 the market. We sold into Wall Street firms running trading
19 applications. We sold into, you know, the government disaster,
11:38 20 gov.help, and FEMA. We were running some of the most
21 mission-critical applications in the world. You can't do that
22 if you've got a lousy product. We did not. We had a very
23 experienced team that wrote, I think, some of the best code in
24 the world.

25 Q. So in your view did Egenera have below average number of

1 complaints about technical issues?

2 A. I mean, yes. I think in my view that's accurate. I can't
3 speak for every company, you know, what their numbers are, but
4 I felt very confident in our quality.

5 Q. And Cisco's counsel mentioned some issues with BladeFrame
6 with drivers. Do you recall that?

7 A. I do.

8 Q. Can you explain some of the issues that BladeFrame may
9 have had with drivers?

11:39 10 A. Yeah. I mean, you know, there's certain -- there's
11 run-of-the-mill bugs that happen every once in a while. In the
12 early days of our Windows development, Windows was very tricky.
13 And it's hard to time warp yourself back to the year 2000,
14 right? And so this is going back quite a ways. Microsoft was
15 evolving how they work with partners, and how they, what's
16 called certified your driver.

17 So the way it works is Microsoft would have a set of APIs. I
18 know it's a technical term. They have a set of ways you could
19 plug in your software to their operating system. And then they
11:39 20 would certify it. They would say this is blessed by Microsoft,
21 that's a valid driver. It was fairly new for Microsoft, and it
22 was new for us, and we certainly were challenged going through
23 that process. But we did, we went through it. We successfully
24 did it and we sold many, many Windows systems after that.

25 Q. Did sometimes customers complain about the drivers?

1 A. Sure.

2 Q. And sometimes did the sale reps for those customers
3 complain to your department about the drivers?

4 A. They sure did. That's what a sales rep's job is to do, is
5 to make sure their customers are happy.

6 Q. Now, you mentioned some of your customers were Wall Street
7 financial services customers?

8 A. Right.

9 Q. Were they demanding or not demanding?

11:40 10 A. They are financial services companies that are making
11 millions if not billions on trading. They're very demanding
12 customers. And most of them were New Yorkers, so they're
13 extremely demanding.

14 Q. Did any of the complaints either from your sales reps or
15 the customers themselves use very direct language?

16 A. Yes. As I mentioned, they were mostly New Yorkers, so it
17 was very direct.

18 Q. Were the -- these complaints about the drivers the cause
19 of Egenera electing not to pursue their IPO?

11:41 20 A. No, not at all.

21 Q. Did these Wall Street companies and customers continue to
22 buy BladeFrame?

23 A. They did. They did for quite a few years.

24 Q. And you could see that the revenues increased all the way
25 through 2007; correct?

1 A. That's correct.

2 Q. And did you sell them BladeFrames after that?

3 A. We did. We continued selling BladeFrames for many years.
4 In fact, when I left the company in 2018 we still had customers
5 running BladeFrame.

6 Q. I'm going to switch gears a little bit and talk about
7 Egenera's interactions with Cisco.

8 A. Okay.

9 Q. And are you aware of interactions between Egenera and
11:41 10 Cisco that occurred during your early years at Egenera?

11 A. Yeah, there were several interactions.

12 Q. What were the first ones?

13 A. First one I could recall is in the 2002 time frame. I
14 think one of our sales executives, that's what we called them,
15 or account executives, was trying to sell a BladeFrame into
16 Cisco at that time.

17 Q. And is that because Cisco runs its own data center?

18 A. Yes. I believe that's why we were selling it to them,
19 yes.

11:42 20 Q. But it wasn't for any kind of business partnership?

21 A. No. It was just a traditional sales call. It never went
22 anywhere. We didn't sell anything to them in 2002.

23 Q. When were the next interactions that took place?

24 A. The next one I remember was January of 2004.

25 Q. And who initiated contact?

1 A. I believe Cisco initiated contact.

2 Q. And do you recall yesterday when Cisco's attorney said
3 that Egenera reached out to Cisco?

4 A. I do.

5 Q. Was that true?

6 A. Yeah.

7 Q. Was that true?

8 A. My recollection is Cisco reached out to us. It was their
9 New Business Ventures team. Either Ray Wu or Ammar Hanafi
10 reached out to us via, I think, Mariam Ganem.

11 Q. Do you recall Cisco's attorney saying early in 2004 it was
12 Egenera trying to sell itself to Cisco?

13 A. I do recall that.

14 Q. Was that accurate?

15 A. No, that was not accurate.

16 Q. So if you could turn to tab 9 in your binder, it was
17 marked as PX BBP.

18 MR. THOMASES: And, your Honor, it's now
19 JTX 493 because there's no objections.

11:43 20 Q. What is this document, please?

21 A. So this was an email from Mariam Ganem. I mentioned her
22 name. She was coordinating a meeting with Cisco based on the
23 outreach to provide information to Cisco. Like I said, they
24 were interested in talking to us about potential partnerships
25 via their New Business Venture group.

1 Q. And the subject line is, "Cisco Plan." Do you see that?

2 A. I do, yes.

3 Q. And the new -- or it's here called Business Ventures Team
4 mentions Ray Wu, Grace Koo and Ammar Hanafi. Do those names
5 ring a bell?

6 A. They do, yes.

7 Q. They report to the head of development Mario Mazzola. Do
8 you recall Mr. Mazzola?

9 A. I do. I believe Mr. Hanafi reported to Mr. Mazzola.

11:44 10 Q. Does this comport with your memory of who contacted
11 Egenera initially?

12 A. Yeah, it does. Like I said, it was either Ray Wu or Ammar
13 Hanafi. So that's what it says here as well.

14 Q. After the mention of Mr. Mazzola, it says, "The business
15 venture team is chartered to look for partnerships to play in
16 the data center consolidation arena, he mentioned that
17 expecting on the synergies, the partnership could potentially
18 be an OEM relationship."

19 Do you recall if that is what Egenera learned from Cisco?

11:45 20 A. Yes. The New Business Development team was out looking
21 for partnerships. They felt that they wanted to be in the data
22 center, more in the core of the data center. And Cisco is
23 certainly there as a switch and routing vendor at that time.
24 They wanted to be more in the core with server and storage
25 connectivity. And so they were looking for technologies that

1 had synergies with their technologies that they could partner
2 with to help them accelerate their entering that market.

3 Q. And at the very top it says they're working to set up a
4 Webex?

5 A. Right.

6 Q. Do you recall if a Webex occurred?

7 A. It did occur.

8 Q. And let's turn to tab 10, which is PBX BBQ.

9 MR. THOMASES: And, your Honor, that is now JTX 494.

11:45 10 Q. Do you recall this document? Pull up the top email.

11 A. Yeah, I do. This is Mariam's recap of the meeting we had,
12 the Webex we had with Ammar Hanafi and his New Business Venture
13 team.

14 Q. So it says, "In attendance was Ammar Hanafi, Vice
15 President and General Manager of New Business Ventures, and his
16 staff, including members of the engineering team and product
17 marketing team."

18 Does that comport with your recollection of that meeting?

19 A. It does.

11:46 20 Q. And it says, "This group is responsible for looking for
21 new markets, new technologies, and understanding if there are
22 any synergies to work together. The objective was to
23 understand the company, our product, and what type of Sware,
24 SW" -- which I believe means software -- "features are our
25 customers buying from us, i.e. PAN services."

1 Do you see that?

2 A. I do.

3 Q. Then it says, "I want to thank Peter, Bryan and Joe for an
4 excellent job." Are you that Peter?

5 A. I am that Peter.

6 Q. So you participated in this Webex with Mr. Hanafi and the
7 engineers?

8 A. I did.

9 Q. And then under that last paragraph it says, "They agreed
11:47 10 to regroup amongst themselves and Ray Wu will continue to work
11 with me to schedule next steps." Do you see that?

12 A. I do see that.

13 Q. Did Cisco do further steps with Egenera?

14 A. They did. They continued to work with, you know, people
15 within Egenera on flushing out concepts more and looking to see
16 whether they wanted to pursue a partnership with us.

17 Q. And did Egenera create a summary of those interactions in
18 and around February 2004?

19 A. We did.

11:47 20 Q. Can we please turn to tab 11, which is JTX 267.

21 And there it says "Cisco Summary" at that first page. Can you
22 please turn to slide 4. And the first bullet says, "Mario,
23 Luca and Soni have -- has high regard for Vern based on his
24 work at GS and Egenera."

25 What is your understanding of that bullet?

1 A. Well, Mario, Mario Mazzola, Luca Calfiore and Soni
2 Jiandani must have had some connectivity to Vern at Goldman
3 Sachs and had a high regard for him there and what he was doing
4 at Egenera.

5 Q. Was it your understanding at that time that Mario Mazzola
6 and his team understood what Egenera was doing?

7 A. I think they were starting to understand. They were
8 starting to learn. We hadn't at this point gone into deep,
9 deep discussions yet but at a high level they certainly
10 understood.

11:48

11 Q. And then the third bullet says, "Feels as though they are
12 out of the core of the data center." Do you see that?

13 A. I do.

14 Q. What was your understanding of that statement?

15 A. Well, again, at that time Cisco was known, you know, for
16 being a networking company. They made routers and Internet
17 switches and very successful at that. But they wanted to
18 further their markets into the core of the data center, which
19 implies server storage and more core functionality. And so
11:49 20 they felt like they weren't positioned at that time

21 appropriately and they were looking for partnerships to help
22 them accelerate that.

23 Q. And this bullet is summarizing what Cisco told you and
24 your team about their being out of the core of the data center?

25 A. That's correct.

1 Q. The next main bullet says, "How do they get into the core
2 of the data center?" And then two bullets below that it says,
3 "Late entry is very much on Mario's mind."

4 Do you recall understanding that Cisco was concerned about
5 being late to the data center?

6 A. I do. It's something they talked about. They felt like
7 they had a gap in their portfolio and they were looking for
8 ways to fill that gap. And partnership is one way to do that.

9 Q. Let's go to the next slide from the same summary. It
11:49 10 says, "Six months ago Ammar" -- do you understand that to be
11 Ammar Hanafi?

12 A. Yes, I do.

13 Q. "Six months ago Ammar was tasked with determining what
14 technologies can help them get to the center of the market."
15 Do you understand that to be the data center market?

16 A. Yes.

17 Q. The last bullet says, "Views Egenera's technology and
18 value-added services as key."
19 Do you understand that to be summarizing Cisco telling you that
11:50 20 they viewed Egenera's technology as key?

21 A. Right. It looks like they looked at two other vendors,
22 thought they were niche and didn't have value-added services.
23 And the fact that we had, you know, enterprise technology and
24 value-added services, that was key to their wanting to do a
25 partnership with us.

1 MR. THOMASES: We could take that down, please,
2 Mr. Fitzgerald.

3 Q. Did you ever have any discussions with Mr. Mazzola?

4 A. I did. We were prepping for the next set of meetings and
5 we had a phone call to discuss what topics we might want to
6 cover.

7 Q. And before the next meeting did there come a time when the
8 parties signed a mutual non-disclosure agreement?

9 A. We did.

11:51 10 Q. And that's commonly referred to as an NDA?

11 A. That's correct.

12 Q. And why did Egenera sign an NDA?

13 A. Well, it's typical for companies that are talking about
14 confidential information to sign a non-disclosure agreement so
15 the other side can't disclose the confidential information.
16 And we obviously wanted to protect our information. We knew we
17 were heading down a path of potentially having deeper
18 discussions with Cisco, so we wanted to protect ourselves in
19 those discussions.

11:51 20 Q. Was one of the reasons you were heading down that path was
21 because Cisco was offering to have a business partnership?

22 A. That's correct.

23 Q. If Cisco was going to be entering the virtualized data
24 center server market, would you have given them confidential
25 information?

1 A. You mean if they were going to develop their own product?

2 Q. Yes.

3 A. No, we would not have done that.

4 Q. Let's look at that NDA, which is tab 12. It's JTX 50.

5 And if you look at the last page, please. Last page, please.

6 Do you see there who signed on behalf of Cisco?

7 A. Yes. That's Ammar Hanafi, Vice President of New Business
8 Ventures.

9 Q. Let's go back to that first page, please.

11:52 10 And if you could look down toward the "Purpose," the next
11 call-out, please.

12 So the agreement, the contract said the purpose was for, "The
13 receiving party may use confidential information solely for the
14 purpose of" -- and then colon, and it says for Cisco, "Evaluate
15 product synergy, IT evaluation and business development
16 potential."

17 Did you understand that was the only use Cisco could use for
18 that information?

19 A. Yes.

11:53 20 Q. And they didn't identify possible entry into the server
21 market; right?

22 A. No, they didn't.

23 Q. And, in fact, did Cisco ever tell you whether they had
24 intentions to enter the server -- whether or not they had
25 intentions to enter the server market?

1 A. I mean, they specifically at that time told us they were
2 not going to enter the server market.

3 Q. After signing this NDA did there come a time when Cisco
4 purchased a BladeFrame to test?

5 A. They did. Shortly after that, I think in maybe the
6 March-ish time frame, they purchased a BladeFrame.

7 Q. Do you recall whether it was someone from Mr. Ammar
8 Hanafi's team that signed the purchase agreement?

9 A. I think it was Ray Wu that signed it.

11:54 10 Q. And after that time did the parties then schedule another
11 meeting?

12 A. We did. We were preparing -- we scheduled a meeting for
13 April of, you know, next month after that, and we worked on the
14 scheduling of that, yes.

15 Q. And if you please put up JTX 0205. It's tab 13.
16 And there's a chain of emails but let's look at the earliest in
17 the chain on the second page. Do you see that's an email from
18 Ray Wu to you?

19 A. I do.

11:54 20 Q. In March?

21 A. Yes.

22 Q. And what is this setting out?

23 A. This is setting out the proposed agenda to the meetings in
24 April.

25 Q. And let's just look at some of these. 10:30 to 11:45, it

1 says, "Better understanding of Egenera technologies based on
2 internal testing."

3 That was part of the plan for the meeting; correct?

4 A. That was part of the plan, yes.

5 Q. And then the next item was, "Egenera product road map,
6 market and customer trends." That was also part of the plan
7 for the agenda?

8 A. Yes.

9 Q. And after lunch it says, "Partnering opportunities and
11:55 10 network value add discussions." Right?

11 A. Right.

12 Q. So this is where Cisco was talking about where they wanted
13 a partnership with you?

14 A. That's right.

15 Q. And, in fact, in setting up the agenda for the meeting,
16 that was part of the reason you agreed to have meetings is for
17 the business partnership?

18 A. Of course. We thought there would be a partnership
19 opportunity for us.

11:55 20 Q. And did a meeting take place following this agenda?

21 A. It did, on April 15th.

22 Q. And did you teach them about Egenera's technology?

23 A. We did. We did a very long, deep-dive presentation. In
24 fact, over lunch we actually did a product demo as well. We
25 brought in another inventor named Scott Geng and he did a demo

1 for them.

2 Q. And it says that they want a better understanding of
3 Egenera technologies based on internal testing. Did they
4 mention anything about testing the BladeFrame or any problems
5 with that BladeFrame during this meeting?

6 A. No, not that I recall.

7 Q. And I think you said the meeting took place April 15th of
8 2004; is that right?

9 A. I think that's correct, yeah.

11:56 10 Q. Let's turn to tab 14, which is JTX 263. Actually, before
11 we go there, can we --

12 MR. THOMASES: Sorry, Mr. Fitzgerald. Can we leave
13 one thing up? Yes.

14 Q. Did, before the meeting, did Mr. Wu provide a list of
15 attendees for the meeting?

16 A. He did.

17 Q. And if we can highlight that. These are the attendees,
18 including Mr. Ammar Hanafi, Peter Ruh, Ray Wu, others, and the
19 last one is someone from engineering; right?

11:56 20 A. That's correct.

21 Q. Your recollection is these people actually did attend the
22 meeting the next day?

23 A. Yes.

24 Q. Okay. Sorry about skipping around. Let's go back to
25 JTX 263.

1 What is this document?

2 A. This looks like the PowerPoint that we delivered to Cisco
3 on April 15th for the deep-dive session.

4 Q. And let's turn to slide 10 in this deck. Okay. First,
5 what is on the left-hand side?

6 A. That's a picture of the BladeFrame, twenty-four processing
7 blades, two control blades, two switch blades, almost no wires,
8 as you can see. Very elegant design. This gentleman is
9 sliding a processing blade into the BladeFrame.

11:57 10 Q. Now, this deck is 68 slides long. Did you or Mr. Brownell
11 present all the material to Cisco?

12 A. We did. We presented all the material. We answered many
13 questions. It was quite the deep-dive session.

14 Q. What you say answered many questions, were they deep-dive
15 technical questions?

16 A. Yeah, they were technical questions.

17 Q. And in this picture here there are also control blades in
18 the BladeFrame; right?

19 A. That's correct.

11:58 20 Q. And those are sometimes called c-blades?

21 A. That's correct.

22 Q. And sometimes Egenera called the processing blades
23 p-blades?

24 A. That's right.

25 Q. Can we scroll down to slide 27 in this presentation you

1 gave to Cisco.

2 Okay. Here we are on slide 27 of JTX 263. What are you
3 showing here when you say Fabric OS architecture?

4 A. So at Egenera we virtualized many of the components that
5 used to be physical that were necessary to manage a server in a
6 data center. And we talked about storage and networking. But
7 there are other things as well in there that, you know,
8 management networks and other types of components that
9 typically make for a very complex environment.

11:59 10 And so we turned those components into software equivalents and
11 put those in the control node. We kind of dubbed that, we
12 called that the Fabric OS.

13 Q. And it was connected to the Fabric Switch?

14 A. That's correct.

15 Q. And below that there's these boxes again with dots between
16 them. They say "memory" and "CPU" in them?

17 A. That's right. Those are our processing blades.

18 Q. Just to clarify, in the actual BladeFrame it also had
19 those Giganet NICs?

12:00 20 A. Yeah. It had to have NICs because it has to talk to the
21 switch. That's the only way we could have done that.

22 Q. Can we go to slide 29, please. And is this depicting
23 essentially the architecture that's in the BladeFrame product
24 itself?

25 A. Yeah. What we were trying to say here is that all what we

1 just described to you, that sophisticated architecture, really
2 lives inside the BladeFrame. So that picture on the right is
3 the architecture, and what we're seeing is it lives there in
4 the BladeFrame.

5 Q. And that includes the Fabric OS, the Fabric Switch and all
6 of those nodes or blades with the memory and CPUs?

7 A. That's correct.

8 Q. And the last bullet says, "Out of the box utility
9 computing capability." What does that mean?

12:00 10 A. Well, so again time warp yourself back to early 2000s. We
11 were trying to create a dynamic computer environment. Utility
12 computing was a term thrown around at the time about flexible
13 computing. What we were saying is, Look, we've got it for you
14 right here in one box. It ships to you all configured, all
15 prewired, and you've got utility computing out of the box.

16 Q. And can we scroll down the same presentation to Cisco to
17 slide 36, please. You see there's a lot of technical
18 information in these slides, but let's go to 36 just to talk
19 about one or two slides.

12:01 20 Okay. This one is talking about PAN virtualization services.
21 What are you describing in this slide?

22 A. So this is what we called just-in-time capacity on demand.
23 So that "JIT" means "just in time." And if you think back to
24 the example I used earlier about the email being
25 over-provisioned and maybe you wanted to change that server to

1 run the banking application, this is the virtualization service
2 that covered that. So we were able to take a generic or an
3 all-purpose processing blade, configure it through software
4 dynamically on the fly, and apply it to a cluster, if you will,
5 or apply it to a virtual processing area network so that
6 customers could run their applications on that set of
7 resources.

8 So as it says, any computing resource, you know, anytime when
9 they are needed. That was really the core piece of this
10 service.

12:02

11 Q. And what did you mean by the last bullet, "Apply computing
12 resources when they're" -- sorry -- "where they are needed,
13 when they are needed"?

14 A. Again, it goes to the dynamic nature of the BladeFrame and
15 the PAN Manager. The problem we talked about at the very
16 beginning of this is the static the nature of legacy servers
17 and how complex or hard it is to move them around or
18 reconfigure them, for various reasons. This capability allowed
19 you to do that in software. So within a matter of minutes you
20 can create a server and apply a configuration and download an
21 operating system and an application to it so that customers
22 could use them at any time.

12:03

23 Q. Does that mean that, for example, a business can use one
24 BladeFrame for business applications in the day, let's say
25 trading, and when the trading stops, use the same BladeFrame

1 for a different application?

2 A. Yeah, that's certainly one function. We talked about
3 expanding capabilities earlier, but that's another good
4 example, a trading application. Wall Street closes at
5 4:00 p.m. What do you do with all those servers that were
6 running your trading applications? They typically sit there
7 idle at night, wasted. Maybe that customer can then
8 reconfigure those servers to run as a different application,
9 maybe a batch processing application or something that you
10 could do at night. And then in the morning when the trading
11 floor opens up again you can turn them back into trading
12 servers. So very dynamic capability.

13 Q. So just to clarify, in a legacy data center you could not
14 take a set of servers used for trading and then quickly at
15 night set them up for another function?

16 A. Well, certainly not quickly. It would take hours, days,
17 months to reconfigure. No, it was part of the challenge. The
18 way customers would get around that is they would buy sets of
19 servers for each application. And rather than repurpose them,
20 they would just shut them down at night or not use them. And
21 so, you know, it cost them a lot of money or it cost them a lot
22 of time and resources to do reconfigurations. It was a real
23 challenging problem for customers at that time.

24 Q. All right. Let's quickly scroll through to slide 50,
25 please. So slide 50 is the beginning of a section called

1 "Product Road Map" and there's "Egenera Confidential" there.

2 A. Right.

3 Q. What was this section about?

4 A. One of the things Cisco wanted to know were what were our
5 futures, what was our road map, where were we going to take the
6 product. This section talks about what our future product
7 releases would be and how we were going to evolve the
8 BladeFrame and PAN Manager going forward.

9 Q. You provided all that product road map to Cisco during
12:05 10 this April 2004 meeting?

11 A. We did.

12 Q. Now, we just saw a bunch of technical information and
13 heard about these deep-dive discussions. Was that information
14 public?

15 A. No. No, that -- excuse me. If that information was
16 public, we would not have had to sign a non-disclosure
17 agreement.

18 Q. Could someone have read the '430 patent
19 application and understood everything that you told to Cisco?

12:06 20 A. No. We went much, much deeper than the patent application
21 in this meeting. We went very deep in technical content.

22 Q. After the April 15, 2004 meeting, what was your impression
23 of Cisco's interest in Egenera?

24 A. You know, our impression was that the meeting went very,
25 very well. We thought there was a real partnership opportunity

1 there. We were quite excited.

2 Q. And in that April 15th, 2004 meeting, did you mention any
3 patent applications that were pending on the BladeFrame?

4 A. Yeah, I think we did. It's typical for us to talk about
5 our patent applications when we do these kinds of
6 conversations.

7 Q. And just to be clear, this April 15th meeting happened at
8 Egenera's headquarters in Marlborough, Mass.; right?

9 A. That's correct.

12:06 10 Q. So was there another meeting after that?

11 A. There was the following month, in May.

12 Q. And did you participate?

13 A. I did.

14 Q. Were you invited to Cisco out in San Jose, California?

15 A. I was. I flew to California to meet with Cisco. I met
16 with their CTO at the time, I think Brian Christensen, I think
17 it was, and I had a follow-up meeting with Ammar Hanafi as
18 well.

19 Q. For the meeting with the Chief Technology Officer at
12:07 20 Cisco, did you do any technical presentations?

21 A. I did a presentation very similar to this.

22 Q. And how did your meeting with Mr. Hanafi go that same
23 trip?

24 A. I think it went very well. We had a great follow-up
25 discussion and it was a very positive meeting, I thought.

1 Q. Did he still seem interested in partnering with Egenera?

2 A. He did. He, in fact, walked me out of the building and he
3 said, I think there's something here. He seemed very positive
4 from his side as well.

5 Q. Did you draft a summary of that meeting that day after you
6 had it?

7 A. I did.

8 Q. Let's turn to tab 15, which was PX ABJ and is now JTX 495.
9 Is this the summary of that meeting you just mentioned?

12:08 10 A. Yes, it is.

11 Q. And you wrote it on May 12th, 2004?

12 A. That's correct.

13 Q. And you were writing to Vern Brownell and Michael Thompson
14 and Bob Dutkowsky?

15 A. Yeah. Our CTO at the time, Bob, Mike Thompson was our
16 COO, and Vern, of course, our founder. So I'm filling them in
17 on the meeting.

18 Q. And it says you spent over an hour with Mr. Hanafi?

19 A. That's correct.

12:08 20 Q. And his team; right?

21 A. And his team.

22 Q. And the third bullet says, "They believe we are the
23 leaders in virtualization and very much like what we have
24 done."

25 Did they tell you that?

1 A. They did, yeah. I mean, like I said, it was a very
2 positive meeting and all indications were that we were heading
3 towards a partnership.

4 Q. And two bullets down it says, "They are very interested in
5 our PAN and our enterprise experience. They are not at all
6 interested in being a server company."

7 Did they tell you that?

8 A. They did.

9 Q. Both that they're very interested in PAN and that they're
10 not interested in being a server company?

11 A. That's right.

12 Q. And, again, if they had said they were interested in being
13 a server company to compete against you, would you have met
14 with them and given them technical information?

15 A. No, of course not.

16 Q. After this May -- well, let me step back. And leave this
17 up, please.

18 On the first paragraph after the last bullet it says, "I was a
19 bit concerned as they asked a lot of questions and seemed to be
12:09 20 picking my brain on what experiences we had. I was (am)

21 somewhat concerned that they are using us to learn and then
22 will implement themselves, as time to market doesn't seem to be
23 a big issue."

24 What were you conveying there?

25 A. I had a sense, if you will, based on the line of

1 questions, that they were asking very, very detailed, specific
2 questions about how things worked. Almost like they were
3 thinking it through themselves. And I was concerned. I mean,
4 I had certainly nothing I can say from the meeting that they
5 said they were going to implement themselves. In fact, again,
6 they told me they weren't planning on being in that market. I
7 just had a feeling and I wanted to express that to Vern and Bob
8 and Mike.

9 Q. And it turns out your Spidy sense was accurate?

12:10 10 A. Turns out it was accurate.

11 Q. Were there interactions between Egenera and Cisco after
12 this meeting?

13 A. Not much. It went very cold after this meeting. We
14 didn't really hear much from them. It was surprisingly quiet.

15 Q. Did you hear anything though about the BladeFrame product
16 that they bought, that the business development team bought to
17 test?

18 A. Yeah. Around this time or so, don't remember exactly
19 when, but we heard that the system they purchased was having
12:11 20 issues, specifically with the control blades.

21 Q. And do you recall seeing the data from their issues?

22 A. I recall seeing a trouble ticket. I personally didn't
23 review the logs or anything, but I certainly saw the incident.

24 Q. And do you understand that the first problem with c-blade
25 was in April?

1 A. I understand that now and I'm sure then we did. One of
2 the things we were able to do is take what's called the logs or
3 the information from when a system crashes so you could review
4 it and see what the history of that system is. And we learned
5 at that time that they also had issues in April as well.

6 Q. And yet they didn't say anything to you during the
7 April 15th, 2004 meeting?

8 A. No.

9 Q. And they didn't say anything to you during this May 12th,
12:12 10 2004 meeting?

11 A. No.

12 Q. Did you have any suspicions about why the blade failed,
13 the one they were testing?

14 A. We did actually. We had a lot of suspicions. The way it
15 failed, two control nodes failing, never happened. I should
16 say very rarely happened. Again, we're running some of the
17 most mission-critical applications in the world. If we had a
18 system that continually crashed like that customers wouldn't
19 have bought it. The way theirs failed seemed suspicious to us.

12:12 20 Q. Did you send them a replacement control blade?

21 A. We did.

22 Q. Did you ever hear any complaints after that?

23 A. No.

24 Q. So you said the communications went cold. Is that what
25 you said?

1 A. That's what I said, yeah.

2 Q. And that was around the end of 2004?

3 A. Yeah, I don't recall exactly. We just didn't have a lot
4 of communications with them after the May meetings. It was --
5 there wasn't a lot of follow-up.

6 Q. What was your reaction to the fact that Cisco stopped
7 reaching out to you?

8 A. We were disappointed. We thought we had a partnership
9 with a large industry company that would have been exciting for
10 us as a small company. And so we were, of course, disappointed
11 that we couldn't work that out.

12 Q. Were you at all surprised?

13 A. We were surprised actually because the interactions were
14 so positive and the depth of information shared was so
15 detailed. We really thought we had a good partnership
16 opportunity.

17 Q. Do you think that Cisco's decision had anything to do with
18 the BladeFrame that they were testing?

19 A. No, I don't.

12:13 20 Q. And when did you first start hearing rumors about Cisco's
21 UCS product?

22 A. Well, we first started hearing rumors about this company,
23 Nuovo, Nuova, I think in the 2006 time frame. We weren't quite
24 sure what they were doing but we knew it was related to the
25 data center business server somehow. And then I think 2008 we

1 heard about something called "Project California," which was
2 the code name Cisco used for the UCS product. So that's when
3 we first started hearing of the potential for them entering
4 that market.

5 Q. Did it have any impact on your sales when there were
6 rumors?

7 A. It did. I mean, certainly in the 2008 time frame and
8 beyond, you know, we would hear from our customers, especially
9 our Wall Street customers, that Cisco might have something that
10 was competitive and they wanted to evaluate that. So it
11 absolutely impacted our sales.

12 Q. During your time at Egenera did you become aware of
13 Egenera employees getting hired by Cisco or Nuovo?

14 A. Yes.

15 Q. And do you recall whether any of those companies had
16 knowledge of the fundamental BladeFrame architecture?

17 A. I didn't catch that. Any of the --

18 Q. Sorry. Maybe I misspoke.

19 Do you recall whether any of the employees that left Egenera
12:15 20 for Nuovo or Cisco had knowledge, technical knowledge about the
21 BladeFrame?

22 A. Quite a few of them did, absolutely.

23 Q. Do you know whether any of the employees who departed
24 Egenera for Nuovo or Cisco had knowledge of the '430 patent?

25 A. Oh, certainly. I mean, they were there when we were

1 developing it, and they were there, many of them were there
2 when we announced it to the company and made a big deal of, you
3 know, press releases. We had a patent plaque in the office
4 right when you walked off the elevator. You couldn't miss it.

5 Q. Do you recall any specific Egenera employees who departed
6 Egenera for Nuovo or Cisco?

7 A. I do.

8 Q. Can you just give some names?

9 A. Satinder Sethi, one example. Scott Clark. Hunter
10 Herring. Rachael Jacobson, who was our senior recruiter.
11 Jason Shaw. A number of very good technical people.

12 Q. Let's return to PDX 7. Did you create a list of employees
13 who departed or were hired away by Nuovo or Cisco?

14 A. We did, yeah.

15 Q. And on the screen, on slide 15 of PDX 7, is this a list,
16 to your best recollection, of the employees that were hired by
17 Cisco and Nuovo?

18 A. Yeah, this looks like the list.

19 Q. That's approximately thirty-five people or so?

12:16 20 A. I'd have to do some quick math, but I think that's around
21 the number I recall is around thirty-five people that left.

22 Q. And how would these folks have come to have knowledge of
23 the BladeFrame and the technical information about it?

24 A. Well, first, we were a small company and so we were very
25 open with a lot of our information. But, more importantly,

1 some of these employees were technical, in technical sales or
2 in technical training. So they would attend engineering
3 architectural reviews. They would attend what we would call
4 brown-bag lunches, where engineers would explain how the system
5 worked to the sales engineers. They had access to source code,
6 so they could have looked at the source code. There's a number
7 of ways. All of our specifications were available for anybody
8 in the company to read.

9 So, you know, and again, some of these, these people were
10 responsible for telling the customers how the systems worked
11 and teaching them how to use it. So they had access to
12 information so they could do their jobs.

13 Q. Now, do you know whether or not any of these employees
14 actually walked out the door with code or documents?

15 A. I can't say for sure. Only Cisco knows that.

16 Q. But they did have a lot of information about the
17 BladeFrame technology in their heads?

18 A. They absolutely did.

19 Q. You mentioned Satinder Sethi. What was his role at
20 Egenera?

21 A. So early on he was the sales engineer for the New York
22 region.

23 Q. And what did he do in that role?

24 A. His job was to assist sales and technically speaking to
25 the customers about how the BladeFrame worked. So he would

1 assist a sales rep going into a customer and be the technical
2 resource for that sales rep.

3 Q. Does that include teaching a customer about functionality
4 and features of the BladeFrame?

5 A. Yes, absolutely.

6 Q. And did he -- you said he was a sales engineer, but did he
7 interact with your engineering team?

8 A. Oh, certainly. He attended architectural reviews. He had
9 access to our specifications. He was very, very integrated
10 with the engineering community.

11 Q. And you mentioned Scott Clark. What was his role at
12 Egenera?

13 A. So Scott, I believe, was the Vice President of
14 Professional Services. So what his role was is when a customer
15 purchased a BladeFrame, they may purchase additional services
16 to help them configure it, maybe migrate their legacy servers
17 and applications. So his team would create those services to
18 help our customers implement the BladeFrame and migrate their
19 old applications.

12:19 20 Q. And to do that did he have to have technical knowledge
21 about the BladeFrame?

22 A. Oh, absolutely. He had to know how it worked, otherwise
23 he wouldn't have been able to help the customers.

24 Q. Was he responsible for creating any documentation about
25 how the BladeFrame worked?

1 A. I'm sure he created some. I can't tell you exactly what
2 he did, but it would be typical for him to create some
3 documentation for that.

4 Q. And you mentioned, I think, Jason Shaw. What was Jason
5 Shaw's role at Egenera?

6 A. Jason started off, if I recall, as tech support. So he
7 would be handling the tickets that were coming in from
8 customers and supporting them. And eventually, I think, he
9 went into training. So he would then become the person who
10 trained customers and even our sales folks on how the system
11 worked.

12 Q. And do you have an opinion as to whether Cisco was
13 purposely targeting Egenera employees when they were building
14 Nuovo and the UCS?

15 A. I certainly have an opinion. It's a large swathe of
16 people that left and went to the same place, so it certainly
17 feels like they're targeting. And the fact that they hired our
18 senior recruiter away certainly adds to that opinion.

19 Q. Do you have any opinion as to whether there's any
12:20 20 connection between Cisco's hiring of all these Egenera
21 employees and Cisco's development and sales of UCS?

22 A. Oh, I think there's absolutely a connection here.

23 Q. I'll change gears a little bit to later in the life cycle
24 of Egenera. At some point during your time at Egenera did
25 Egenera make plans to sell software, the PAN Manager software

1 as a product?

2 A. Yeah. We were looking to expand our market. And so as
3 the market evolved and as technology evolved, we looked at
4 offering a software-only product that could run on other
5 vendors' hardware as a way to expand our capabilities and our
6 market.

7 Q. Do you recall an approximate time frame of when that plan
8 came into place?

9 A. I think it was around the 2008 time frame.

12:21 10 Q. And during that time frame was Egenera still making
11 hardware?

12 A. Oh, absolutely.

13 Q. And for how long did Egenera continue to make hardware?

14 A. Many years. Three, five years, maybe more. As I
15 mentioned earlier, we still had customers running on our
16 hardware when I left in 2018. So we continued to make hardware
17 and service it for a long time.

18 Q. Do you recall whether any of that hardware was still being
19 used in mission-critical applications?

12:22 20 A. Oh, absolutely. Again, when I left, I recall UK Post
21 Office running BladeFrames. I recall Standard Charter Bank,
22 one of the largest international banks in the world, still
23 running BladeFrame. Still running very mission-critical
24 applications.

25 Q. Now, let's turn to the financial crisis of 2008. How did

1 that impact Egenera?

2 A. Like every company it had impact. I mean, the world was
3 turned upside down. We had to make some hard decisions around,
4 you know, what we could do to protect our company. We actually
5 had -- we had a layoff, which was unfortunate, but we were
6 trying to make sure that we could ride through this, what was
7 going to be a very bumpy time, and protect, you know, the
8 company going forward. As unfortunate as it was, it was the
9 right thing to do.

12:23 10 Q. And when you mentioned earlier that you looked at the
11 financial data for Egenera's total revenues, did you look at
12 the time frame from 2008 to the time you departed in 2018?

13 A. I did.

14 Q. Let's turn to PDX 7 again and we'll go to Slide 17. This
15 is the graph of revenues, but now we've extended it out. Do
16 you recall what happened in 2008 in terms of total revenues?

17 A. Yeah. Again, it was a tough year for everything, not just
18 us. I think our revenues went down that year. But if I
19 remember, not, not too bad considering what was going on in the
12:23 20 world. I'm actually quite proud of the way we made it through
21 that year.

22 Q. Well, let's advance the slide there. Do you recall
23 Egenera making \$85.7 million in total revenue in 2008?

24 A. Yeah, that seems about right. Yes, I do recall that.

25 Q. And we'll just advance the slide a little bit. Do you

1 remember when UCS was officially released?

2 A. It was in 2009, in the springtime of 2009, I think.

3 Q. And do you recall what happened to Egenera's revenues
4 after UCS was released?

5 A. It was a fairly steady decline.

6 Q. I'm going to advance the slide. And can you just read the
7 numbers for each year in total revenue?

8 A. Yeah. In 2008, from 85 million 700, roughly 700,000, we
9 went to \$60 million in 2009, 63 in 2010, and then 35, 26, 21,
10 16, 11 and 8 in the subsequent years. So a fairly steady
11 decline.

12 Q. Each of those numbers were in millions?

13 A. Millions, yes.

14 Q. When did Egenera first suspect the UCS product infringed
15 on the '430 patent?

16 A. I think we started suspecting that in 2008 when we heard
17 rumors about Project California, and then certainly had more
18 feelings in 2009 when we actually saw the UCS product, you
19 know, be publicized and come to market. So early on we had a
12:25 20 suspicion.

21 Q. But you didn't initiate litigation at that time?

22 A. No, we didn't.

23 Q. Did you have an actual UCS to analyze?

24 A. No, we never purchased a UCS.

25 Q. So why didn't you initiate litigation at that time?

1 A. Look, this, it's a big step. Right? And we're trying to
2 build a company. In 2008 we're trying to come out of the
3 financial crisis that was leaking into 2009, so that was a
4 tumultuous time to begin with. After that we're trying to
5 build a company and expand our portfolio with software. And,
6 you know, suing someone, especially someone with the resources
7 of a Cisco, can be very time-consuming, very distracting for a
8 company.

9 So I think of it more as a last resort kind of thing. It's not
10 what we were looking to do. But, you know, by the time 2016
11 came around we just said enough's enough, we have to do
12 something.

13 Q. So advance the slide. So do you recall that as of
14 August 15, 2016, that the company initiated litigation?

15 A. I don't recall the exact date but that sounds about right.

16 MR. THOMASES: Your Honor, we'd like to move PDX
17 7 into the record as an exhibit.

18 THE COURT: Very well.

19 THE CLERK: 495.

12:27 20 MR. THOMASES: I believe that might have been 496.

21 Thank you.

22 (Exhibit JTX-496 received into evidence.)

23 Q. Now, I think you mentioned earlier you left Egenera in
24 2018; correct?

25 A. I did, yes.

1 Q. Do you still own any shares of Egenera stock?

2 A. I do.

3 Q. Do you believe they have value?

4 A. No, I don't believe there's any value.

5 Q. And do you believe that your shares of stock would become
6 valuable as a result of this litigation?

7 A. No, I don't.

8 Q. And why is that?

9 A. I own common shares, which is the lowest type of share the
10 company has. There's many other types of shares that have
11 higher preference than the common shares do. So I don't expect
12 any outcome from this at all.

13 Q. And are you being paid for your testimony here today?

14 A. No, I'm not.

15 Q. And you're currently not employed, and you're employed at
16 Dell; correct?

17 A. That's correct.

18 Q. So why are you testifying today?

19 A. It's the right thing to do.

12:28 20 Q. Thank you.

21 MR. THOMASES: I pass the witness, your Honor.

22 THE COURT: All right. Cross-examination.

23 MR. DESMARAIS: Thank you, your Honor.

24

25

CROSS-EXAMINATION

BY MR. DESMARAIS: :

Q. Good afternoon, Mr. Manca.

A. Good afternoon.

Q. Now, when you started at Egenera it was a -- in 2000 it was a venture-backed startup; true?

A. That's correct.

Q. And still sort of is today?

A. I can't speak to today, I'm not there anymore. But

12:29 10 it's -- yeah, I -- it was a venture back when I started there.

11 Q. You know that some startups are successful and some fail;
12 is that right?

13 A. That's correct.

14 Q. And it's fair to say most venture-backed startups fail;
15 right?

16 A. I think that's fairly accurate, yes.

17 Q. Now, Egenera started in 2000; is that right?

18 A. That's correct.

19 Q. And you filed your patent and started selling the
12:30 20 BladeFrame in 2001; right?

21 A. I think we filed the provisional in 2001 and we did start
22 selling the BladeFrame in 2001. Correct.

23 Q. And I'm showing you what we used earlier in the case,
24 JTX 490, which was Mr. Packin's chart.

25 MR. THOMASES: Counsel, do you have a copy for me,

1 please?

2 MR. DESMARAIS: No. It was created in court. We
3 didn't bring copies.

4 Q. Now, you told us about your product the BladeFrame. One
5 thing that's missing from this chart is when the UCS was
6 launched. The UCS was launched in July 2009; right?

7 A. I don't know the exact date but that sounds accurate.

8 Q. And the UCS is the product that this case is about; right?

9 A. That's correct.

12:31 10 Q. Now, in the first few years, as Mr. Packin reviewed
11 earlier, the sales were pretty strong; right?

12 A. They were indeed.

13 Q. Fair to say that, you know, from 2001 to 2004 it was rapid
14 growth?

15 A. Yes, that's fair.

16 Q. And, in fact, it was so rapid you were considering an
17 initial public offering like we talked about, right, to sell
18 the company to the stock market?

19 A. That's correct.

12:31 20 Q. To the public, I should say.

21 And one of the reasons you were trying to sell Egenera to the
22 public at that time is because it was a venture-backed startup,
23 the venture capitalists who put their money in needed a
24 liquidity event to make their profit; right? They want to do
25 an IPO, they want to sell the company or they want to do

1 something to get their investment out of the company; right?

2 A. I think that's accurate, yes.

3 Q. Yeah. And, in fact, Mr. Phillips here, who's sitting at
4 counsel's table, is one of those venture capital investors in
5 Egenera; right?

6 A. Yes, he is.

7 Q. One of the ways for him to get his money back is to have a
8 successful IPO; correct?

9 A. That's correct.

12:32 10 Q. Now, in this time period, 2004, when you were planning for
11 the IPO, you were also in that, roughly, that same time,
12 meeting with Cisco; right?

13 A. Yes.

14 Q. And one of the things you were discussing is selling
15 Egenera to Cisco; right?

16 A. I actually don't recall that. I recall us having
17 discussions about partnerships.

18 Q. Well, in any event, you didn't have any luck convincing
19 Cisco to purchase Egenera; right?

12:33 20 A. I don't think we tried to have Cisco or convince Cisco to
21 purchase us in that time frame.

22 Q. I'm sorry. What was that?

23 A. I don't think we tried to have Cisco purchase us in that
24 time frame.

25 Q. All right. Let's come back to that.

1 It was in that time frame that, when you were having those
2 conversations with Cisco, that Cisco purchased the BladeFrame
3 from you, and you talked about that on your direct; right?

4 A. That's correct.

5 Q. And you also talked about how they had some trouble with
6 their BladeFrame; right?

7 A. That's correct.

8 Q. And rather than keeping the trouble they had with their
9 BladeFrame secret, they actually reported it to Egenera in what
10 you referred to on your direct as a trouble ticket; right?

11 A. That's correct.

12 Q. And a trouble ticket is what a customer does when there's
13 something going wrong with the BladeFrame; right?

14 A. Generally, yes. Yeah.

15 Q. And when Cisco bought that BladeFrame, they weren't
16 purchasing that, you know, behind Egenera's back, they
17 purchased it from Egenera using a purchase order; right?

18 A. That's correct.

19 Q. And just like any other customer, you sort of hoped they
12:35 20 would like it and hoped they would either buy more or do a
21 business deal with Egenera; right?

22 A. I think that's accurate.

23 Q. But the trouble they had with the BladeFrame they
24 purchased from you was what you call a severity 1 trouble
25 ticket; right?

1 A. That would -- yes, that would make sense.

2 Q. In fact, it was a total system failure; right? That's
3 what a severity 1 means?

4 A. Typically, yes.

5 Q. Because the BladeFrame that Cisco bought from you was
6 crashing and rebooting and crashing and rebooting; right?

7 A. Yes, I remember the -- both c-blades crashed. I don't
8 remember if it was crash and rebooting and crash and rebooting,
9 but I do remember both c-blades crashing.

12:36 10 Q. After that BladeFrame and the trouble ticket and the
11 crashing and rebooting, Cisco never bought another BladeFrame
12 from Egenera; right?

13 A. That's correct.

14 Q. And you know, don't you, instead of buying a -- by the
15 way, that BladeFrame was bought by Cisco's IT department for
16 their internal IT; right?

17 A. Perhaps. I know it was signed by Ray Wu from the New
18 Business Ventures team.

19 Q. But you know the BladeFrame went to Cisco's internal IT
12:36 20 group for consideration of their internal uses; right?

21 A. I think that's correct.

22 Q. And after the BladeFrame that they bought failed the
23 testing and crashed and rebooted and crashed and rebooted, you
24 know, don't you, that Cisco instead purchased Hewlett-Packard
25 products and IBM products to outfit their IT needs; right?

1 A. Actually, I have no idea what Cisco purchased.

2 Q. Well, they didn't purchase Egenera products?

3 A. That's correct.

4 Q. And around this time frame in 2004, when the BladeFrame
5 that you sold Cisco was crashing and rebooting, that was not
6 the only customer that was having trouble with the BladeFrame;
7 right?

8 A. Probably not. As I testified earlier, it's typical for
9 customers to have issues that we respond to and fix. But I
10 12:37 can't speak to, at that time frame, who else was having
11 troubles.

12 Q. You know other -- you know other folks were having trouble
13 with the BladeFrame, don't you, sir?

14 A. Certainly. You mentioned that time frame, that's all.
15 I'm just trying to clarify that.

16 Q. But you said in your answer "probably." What I'm saying
17 is you actually know other people in the 2004 time frame were
18 having trouble with the BladeFrame?

19 A. Oh, in the year 2004, certainly.

10 12:37 20 Q. Let's take a look at some of the trouble tickets from that
21 time period. Before we do that, let me ask you this: The
22 financial services industry, I think you mentioned, was a big
23 market for you guys; right?

24 A. That's correct.

25 Q. So let's take a look at JTX 24.

1 MR. DESMARAIS: Your Honor, may I approach with some
2 binders?

3 THE COURT: You may.

4 (Hanging.)

5 Q. Okay. Let's take a look at JTX 24 in the binder.

6 And JTX 24 is an email to you dated May 13 --

7 MR. DESMARAIS: Actually, can I have the Elmo instead?
8 Thank you.

9 Q. It's an email to you dated May 13, 2004. Do you see that?

12:39 10 A. I do.

11 Q. And the subject line is, "Bear update - More problems with
12 Multicast." Do you see that?

13 A. I do.

14 Q. "Bear" is a reference to "Bear Stearns"; right?

15 A. That's correct.

16 Q. That's the big Wall Street bank; right?

17 A. Yes.

18 Q. And they were an important customer of Egenera and the
19 financial services industry which was your biggest market;
12:40 20 right?

21 A. Yes.

22 Q. And this multicast issue they were having with the
23 BladeFrame was something the financial services customers used
24 in their trading applications; right?

25 A. That's my understanding, yes.

1 Q. And the trading applications is, like, the critical part
2 of Bear Stearns and other companies like that; right?

3 A. Sure. I mean, I can't speak to their businesses but
4 trading applications are important applications.

5 Q. So let's take a look at what was going on with the
6 BladeFrame at Bear Stearns in 2004. It says -- so this is a
7 message from Chuck Dooley. Who's Chuck Dooley?

8 A. Chuck Dooley was a salesperson in the New York region.

9 Q. And pardon my language here. It says, "We are in a shit
10 storm at Bear." Do you see that?

11 A. I do.

12 Q. And let's look at what they were complaining about. If
13 you look on the next page, "The customer took a hard line with
14 us. Without giving us credit for responding quickly to the
15 issue" -- or -- "to issues. The customer was instead irate
16 that there were any issues at all. He said that the equipment
17 should just run correctly and they shouldn't have to put up
18 with problems like this, the problems that we have already
19 addressed, plus one new one, see below, that they are seeing
20 now." Do you see that?

21 A. I do.

22 Q. And then it continues, "That waste of his time and the
23 developers' time." And then it goes on, "He wanted us to tell
24 him how many other customers we had running Windows."

25 And "Windows" is referring to the Microsoft Windows operating

1 system; right?

2 A. That's correct.

3 Q. "And in particular, how many doing multicast on Windows."
4 Do you see that?

5 A. I do.

6 Q. So they're asking you at this time, Bear Stearns is asking
7 the Egenera rep, Have you done this before? How many people
8 are you doing this for? Right?

9 A. That sounds reasonable, yes.

12:42 10 Q. And your rep says, "We danced a little around that one,
11 trying to make our few customers sound like a lot." Do you see
12 that?

13 A. I do.

14 Q. "We have to tread lightly as we build up our experience
15 base around Windows, not scaring off our early prospects by
16 revealing the fact that we are using them as trailblazers." Do
17 you see that?

18 A. I do.

19 Q. Now, what was going on is when you started the BladeFrame
12:42 20 you built it on the Linux operating system; right?

21 A. That's correct.

22 Q. And then Windows gave you some trouble, didn't it? The
23 Windows operating system gave you some trouble?

24 A. Well, we started Windows development much later. So we
25 started with Linux, as you described, and then we started

1 developing Windows.

2 Q. If you look down it says, "Recall that their benchmark
3 numbers showed essentially perfect multicast performance
4 (achieved with bandwidth with negligible packet loss) as long
5 as the rate was less than about 50,000 packets per second." Do
6 you see that?

7 A. I do.

8 Q. "But the real app is showing bad loss rates at even 25,000
9 packets per second." Right?

12:43 10 A. That's what it says, yes.

11 Q. So you were having, essentially, packet loss. The data is
12 sent in packets; right?

13 A. That's correct.

14 Q. So what this is saying is you were actually losing data on
15 the BladeFrame at the Bear Stearns installation; right?

16 A. Yeah. I agree that we had a bug.

17 Q. And especially at higher speeds, so there was sort of a
18 bandwidth issue? At higher speeds data packets were being lost
19 on the BladeFrame; right?

12:43 20 A. I'm not sure it was a bandwidth issue. We had a bug, we
21 had to fix the bug, and we did.

22 Q. Now, if you look back at the top of the email, "To date,
23 these apps have already been certified on other Intel platforms
24 (IBM and HP blades)." Do you see that?

25 A. I do.

1 Q. And that's talking about your competitors at the time.
2 IBM and HP were competing in this market and Bear Stearns had
3 that equipment too; right?

4 A. They had blade servers, yes.

5 Q. And at this time in 2004 IBM, HP, and Sun were competing
6 with you in these markets; right?

7 A. Uhm, yeah, I think that's fair.

8 Q. And what Bear Stearns is saying here in this email at that
9 line I just read is that the HP products were working okay with
10 Windows, and the IBM products were working okay with Windows,
11 it was your product that was having trouble with Windows;
12 right?

13 A. That's the way it reads, yes.

14 Q. And it says, "We" -- meaning Egenera -- "are being held
15 accountable for delaying the certification by three weeks.
16 These Windows apps are critical." Do you see that?

17 A. I do.

18 Q. And if we flip back to the first page, "Bill Oakes is
19 working on building this into the driver and we have Blaine
12:45 20 lined up to install and spend time with BSC." That's Bear
21 Stearns; right?

22 A. Yes.

23 Q. "Once driver is ready. The concern we have is the reality
24 of not being able to have more than 4-6 blades in a multicast
25 group within the frame for this app." Do you see that?

1 A. I do.

2 Q. And it says, "This limitation most likely will not be
3 acceptable to meet their QTIP application requirements." Do
4 you see that?

5 A. I do.

6 Q. The driver they're talking about there is the driver
7 that's -- a driver is software; right?

8 A. That's correct.

9 Q. And that's software that you guys at Egenera had to code
10 and put into the system so that it could work with the Windows
11 operating system; right?

12 A. That's correct.

13 Q. And as we see in this email, that code to get it to work
14 with Windows, that code was complicated, it was a complicated
15 thing for you to figure out; right?

16 A. Sure. All this software is complicated but we did figure
17 it out.

18 (Pause in proceedings.)

19 Q. So I'm just making a note of some things as we go along.
12:46 20 So it's fair to say that, as we just discussed, the drivers
21 were complicated software modifications that were needed to
22 work within Windows Microsoft -- with the Microsoft Windows
23 operating system; right?

24 A. Well, I think that's true of all drivers, not just ones
25 that run on BladeFrame. Certainly the ones on other vendors

1 have the right drivers as well. Right? Sure, it's complex
2 work.

3 Q. And it says here, as we just reviewed, "The concern we
4 have is the reality of not being able to have more than
5 4-6 blades in a multicast group within the frame for this
6 application." Do you see that?

7 A. I do.

8 Q. So what they're worried about here is with the system that
9 you have in the BladeFrame, that you won't be able to get
10 enough blades into the product and use it with multicast to
11 make it work to satisfy Bear Stearns; right?

12 A. That was the salesperson's concern, yes.

13 Q. And fair to say that you would call the number of blades
14 scaling?

15 A. I'm not sure I follow that. The --

16 Q. What would you call the BladeFrame's capacity to have
17 blades versus another product's capacity to have blades?
18 That's scaling, isn't it? Bandwidth and scaling?

19 A. I'm not sure I would tie those two together. I'm not sure
12:49 20 I quite follow that, to be honest with you.

21 Q. All right. Well, let's keep it the way you want to keep
22 it in the email there. Limitation on number of blades. That's
23 what the email says; right?

24 A. That was what the bug was describing, yes. Again, we
25 fixed the bug and removed that limitation.

1 Q. Now, we're going to get to that.

2 Now, Bear Stearns wasn't the only financial services company
3 you were having trouble with in the 2004 time frame; is that
4 right?

5 A. Honestly, I don't recall. I wouldn't be surprised if
6 there were more incidents but I don't recall the specifics.

7 Q. Well, let's just be clear. You know there were more
8 instances; right? It's not that you wouldn't be surprised, you
9 know that there were more?

12:50 10 A. Of financial services firms?

11 Q. Yes.

12 A. Honestly don't recall but, again, I wouldn't be surprised.

13 Q. You had trouble at Lehman Brothers; right? Lehman
14 Brothers is another big financial -- or at least it was, before
15 the financial crisis, one of the big financial houses that you
16 were selling products to; right?

17 A. Lehman Brothers was a customer of ours, yes.

18 Q. And you had, with the BladeFrames that were at Lehman in
19 this time period, you had frame failures and trouble with the
12:50 20 drivers on the operating system; right?

21 A. Again, I don't recall but I have no reason to disbelieve
22 you.

23 Q. Would it help if I showed you a clip from your deposition?

24 A. Sure.

25 MR. DESMARAIS: Can we play M285, which is on

1 **page 402 at line 11.**

2 (Video playing.)

3 "QUESTION: Is that Lehman Brothers?

4 "ANSWER: Yes, it is.

5 "QUESTION: That's an example of a financial company?

6 "ANSWER: Yes, they are.

7 "QUESTION: Are they an example of a --

8 "ANSWER: Yes, they were.

9 "QUESTION: Let me get the question out. Were they an example

12:51 10 of an impatient financial services company?

11 "COURT REPORTER: Of a?

12 "COUNSEL: Impatient.

13 "ANSWER: Yeah, I think all the financial services companies
14 were impatient. Lehman is one example.

15 "QUESTION: So this status report reflects that they had a
16 frame failure on a SAN upgrade. Do you see that?

17 "ANSWER: I do."

18 Q. Does that refresh your recollection that Lehman had a
19 frame failure?

12:51 20 A. It does. Yeah, I don't know -- I'm sorry. Does that have
21 a time frame associated with it?

22 Q. 2004.

23 A. All right. Thank you.

24 Q. Now, in addition to your critical market of financial
25 services, you had these sorts of troubles with the BladeFrame

1 in the other markets too; right?

2 A. We had trouble through the years, just like any vendor,
3 certainly.

4 Q. But I'm talking about in this time frame, in 2004 when you
5 were considering going public. So we've seen Bear Stearns had
6 trouble with the BladeFrame. One of your big customers,
7 Lehman, had trouble with the BladeFrame. Isn't it true, sir,
8 that you also had trouble with your BladeFrame at your largest
9 customer, Savvis?

12:52 10 A. We may have.

11 Q. You know you did, right, sir?

12 A. I know we had troubles. I can't remember the time frame.
13 Again, it's fairly typical for a vendor to have bugs they have
14 to fix.

15 Q. Now, Savvis, before we looked at the trouble ticket,
16 Savvis was your largest customer of all; right?

17 A. Ultimately they were, yes.

18 Q. And Savvis hosted data centers all across the country and
19 even outside the United States; right?

12:52 20 A. Certainly in the country. I don't -- yeah, I think
21 outside the United States as well.

22 Q. So they were important to you?

23 A. Very important, yes.

24 Q. So let's take a look at DX CR. DX CR is an email that
25 you're copied on dated August 4th, 2004. Do you see that?

1 MR. DESMARAIS: And while he's looking for that, your
2 Honor, I'm going to remark DX CR as JTX 497.

3 A. What is DXT as in "Tom" or "C" as in "Charlie"?

4 Q. "C" as "Charlie."

5 MR. DESMARAIS: May I have the Elmo, please?

6 A. Okay. I have that here.

7 Q. And do you see that this is an email that you're copied on
8 dated August 4th, 2004?

9 A. Yes.

12:54 10 Q. And it's about a Savvis tech call. Do you see that?

11 A. I do.

12 Q. And it says, "Looks like we have an unhappy customer." Do
13 you see that?

14 A. I do.

15 Q. Now, if we turn over, you get a -- the email starts with
16 someone from Egenera named Irish Spring. Do you see that?

17 A. I do.

18 Q. And it says, "I got bawled out today by Savvis regarding
19 our last big driver fiasco." Do you see that?

12:54 20 A. I do.

21 Q. And, again, the driver is that complicated software that
22 you need to work with the operating system; right?

23 A. It is, yes.

24 Q. Now, "I didn't catch much of what Gary Bollman was pissed
25 about" -- excuse me -- "all Windows stuff."

1 So, again, this is the Microsoft operating system; is that
2 right?

3 A. That's correct.

4 Q. And you had trouble in this time period in 2004 with the
5 Windows operating system and getting the drivers to work on the
6 BladeFrame in lots of accounts, right? Not just Savvis, not
7 just Lehman, not just Bear Stearns? You had it in a lot of
8 your accounts; right?

9 A. I don't recall, but what I do recall is we just came out
10 with that product. It was a brand-new product for us in that
11 year. So it's not surprising that we would have some bugs in a
12 new product.

13 Q. Now, again, I'm not going to read some of these things
14 because it's a little tricky to do in a courtroom. But fair to
15 say that your largest customer was pretty unhappy with the work
16 you were doing at the time? And you can see, "What the is up
17 with the damn drivers anyway?" Do you see that?

18 A. I do.

19 Q. And that's the Egenera software to work with the Windows
12:55 20 operating system; right?

21 A. That's correct.

22 Q. "We can't talk directly to the developers during driver
23 outages? Why can't we back out drivers on Egenera like every
24 other platform?"

25 Do you see that, sir?

1 A. I do.

2 Q. "Every other platform" is referring to HP and IBM and the
3 other competitors; right?

4 A. Sure. But they weren't platforms like the BladeFrame.

5 Q. "Why are the Windows platforms on Egenera so GD unstable?"
6 Do you see that?

7 A. I do.

8 Q. Your customer, your largest customer, just like the
9 financial houses, were unhappy with you in this 2004 time
10 frame; fair to say?

11 A. They were certainly unhappy with the Windows product in
12 the 2004 time frame.

13 Q. And is it fair to say that there were hundreds and
14 hundreds of trouble tickets about this?

15 A. I actually --

16 Q. They were produced in this litigation; right?

17 A. Actually, I don't know that.

18 Q. But it wouldn't surprise you, would it?

19 A. No. I mean, trouble tickets can be entered for a number
12:56 20 of reasons. They're not all bugs. Sometimes they're
21 enhancement requests, sometimes they're mistakes that a
22 customer makes. There are a lot of reasons why you would enter
23 a trouble ticket.

24 Q. But in the ones we're looking at here, at your largest
25 customers, your largest market are focused on the complicated

1 modifications you need to make to the drivers to talk to the
2 operating system; true?

3 A. They're focused on the Windows drivers, which was a new
4 product for us in 2004. So, yes, absolutely.

5 Q. And we already talked about in 2004, and I think how you
6 were setting up to have an IPO in 2004; right?

7 A. Correct.

8 Q. And then, now, I know your counsel asked you, your revenue
9 didn't level off, but if you -- if we're looking at BladeFrame
10 revenue, not software revenue and services revenue, if we're
11 looking at BladeFrame revenue, from 2004 to 2005 it, you know,
12 leveled off compared to what it was doing in the prior four
13 years; true?

14 A. If you're looking at that narrow view of things, yes.

15 Q. Right. And this is the time frame when the new Windows
16 product came out, the new Windows operating system came out,
17 your new product came out and you were having trouble getting
18 it to work; true?

19 A. It is that time frame, yes.

12:58 20 Q. Yes. And in 2005 you canceled your IPO; right?

21 A. That's correct.

22 Q. And it's true, isn't it, that you don't blame Cisco at all
23 for the fact that you canceled your IPO? UCS had nothing to do
24 with you canceling the IPO; right?

25 A. That's correct.

1 Q. Now, then if we look at that 2004, 2005, and we jump into
2 2006, you know that at that point your competition with HP
3 really ratcheted up because they launched a new product; right?

4 A. I don't remember that detail from that long ago, but I do
5 remember HP coming out with new generations of their blade,
6 yes.

7 Q. And they came out with a new generation of blade in 2006;
8 right?

9 A. Again, I don't remember the exact dates.

12:59 10 Q. Do you read Gartner reports?

11 A. I do sometimes but not from 2006, no.

12 Q. All right. Well, we have one in evidence here. If you
13 take a look at, in your binder, it's DX IP. But in the trial
14 record it was remarked as JTX 489.

15 A. Yeah, I see it here.

16 Q. Okay. And if you look, I'll put it up on the screen so
17 you can see where I'm looking.

18 THE COURT: Perhaps we can take this up tomorrow.

19 It's 1:00.

01:00 20 MR. DESMARAIS: Oh, is it time already? Oh, okay.

21 Thank you. Time flies when you're having fun.

22 THE COURT: Well, it's absorbing so you can lose track
23 of time. But I haven't lost track of time. Plaintiff has used
24 three hours and five minutes. Defense time is two hours and
25 eighteen minutes.

1 All right. Jurors, we're going to resume tomorrow promptly at
2 9:00. I will report to you a national legal journal, Law360,
3 assigned one of its best reporters to do an article on the
4 trial yesterday. Again, I ask that you not do independent
5 research on your own, but we will copy it and save it for you
6 so you'll have that and anything else I see at the end of the
7 trial.

8 MR. DESMARAIS: Your Honor, there is one thing. With
9 your Honor's permission, of course, the parties agreed that we
01:00 10 were going to take a witness out of order tomorrow because he's
11 not in the area.

12 THE COURT: Yeah. That's common in a civil trial. If
13 a witness' schedule doesn't quite fit our schedule, we'll take
14 him out of order. That is, suspend with this witness, hear a
15 new witness, and go back to this witness in the morning.
16 All right. The jury is excused until 9:00.

17 THE CLERK: All rise.

18 (The jury left the courtroom.)

19 (Proceedings adjourned.)
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24
25

C E R T I F I C A T E

We, Debra Joyce and Cheryl B. Palanchian, Court Reporters for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of our shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/ Debra M. Joyce 8/3/2022
DEBRA M. JOYCE

/s/ Cheryl B. Palanchian 8/3/2022
CHERYL B. PALANCHIAN

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E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Received</u>
JTX-486	Hand drawn exhibit by Mr. Packin	19
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